



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MPA/160921

PRELIMINARY RECITALS

Pursuant to a petition filed September 26, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on November 05, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner has submitted evidence sufficient to demonstrate that a denial of personal care worker (PCW) hours to be paid for by the Medicaid program may be reversed.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

█

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Cindy Zander, RN, BSN
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. A prior authorization (PA) request seeking Medicaid payment for 24.5 hours (or 98 units with each unit = 15 minutes) per week of personal care services, 24 hours (96 units) of as needed (PRN) personal care services and 28 units or 7 hours for PCW travel time was filed on behalf of Petitioner

on or about June 17, 2014. The total cost was noted to be \$35,288.50. The requesting provider is Community Home Health Care, Inc. The request was for 53 weeks.

3. Petitioner is 45 years of age (DOB [REDACTED]). She lives alone in the community. The diagnosis on the PA indicates pain, not elsewhere classified. Petitioner is also diagnosed with schizophrenia, back pain, leg pain and hypertension. She is noted to have functional limitations in endurance and ambulation. She may use a cane, tub seat and grab bars in the shower.
4. This PA for PCW services was denied completely by the Department. The Department did review clinical notes from Petitioner's recent medical visits and found that they did not support a conclusion that Petitioner must have personal care services.

DISCUSSION

When determining whether to approve any medical service, the OIG must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, § DHS 107.02(3) (e)*:

(e) *Departmental review criteria.* In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

(a) Required to prevent, identify or treat a recipient's illness, injury or disability; and

(b) Meets the following standards:

1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and

9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, §DHS 101.03(96m).

Also, the following Administrative Code provision is relevant here:

DHS 107.112 Personal care services. (1) COVERED SERVICES. (a) Personal care services are medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care. The personal care worker shall be assigned by the supervising registered nurse to specific recipients to do specific tasks for those recipients for which the personal care worker has been trained. The personal care worker's training for these specific tasks shall be assured by the supervising registered nurse. The personal care worker is limited to performing only those tasks and services as assigned for each recipient and for which he or she has been specifically trained.

(b) Covered personal care services are:

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;
12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

Wis. Admin. Code, §DHS 107.112(1)(a) and (b).

I note at this point that the Petitioner has the burden of proving that the requested therapy meets the approval criteria and that the standard level of proof applicable is a "preponderance of the evidence". This legal standard of review means, simply, that "it is more likely than not" that Petitioner and/or his/her representatives have demonstrated that the requested services meet the criteria necessary for payment by the Wisconsin Medicaid program. It is the lowest legal standard in use in courts or tribunals.

The Department provided a letter (Ex # 3) that detailed its rationale for modifying this request for personal care services. It need not be reproduced here. The Department reviewed clinical notes from physician visits. Those references do not confirm the limitations alleged by the provider. Evidence offered by and/or on behalf Petitioner does not demonstrate that she qualifies for personal care worker services. While Petitioner has pain issues, the evidence does not point to functional limits of the nature that would permit approval of personal care services.

Also there are possibly other types of assistance that might be available to Petitioner via the Family Care and/or IRIS programs. Petitioner may want to explore these programs for assistance, again, the Family Care program and the Include, Respect, I Self Direct (IRIS) program. The starting point for learning more about these programs is to contact the Milwaukee County Disability Resource Center:

How do I Contact the Disability Resource Center?

Call [REDACTED]
Fax [REDACTED]
Telecommunication Relay Service (TRS): 711
E-mail: DSD@milwcnty.com
Website: www.county.milwaukee.gov/DSD.htm

The evidence also suggests that Petitioner contact the following concerning assistance with mental health issues which can also assist her with remaining independent in the community:

Service Access to Independent Living (SAIL)

The SAIL program helps adults with mental illness achieve the greatest possible independence and quality of life by assessing individual needs and facilitating access to appropriate community services and supports. Individuals can receive referrals to a variety of services, including:

- ▶ **Targeted Case Management;**
- ▶ **Community Support Programs;**
- ▶ **Day Treatment;**
- ▶ **Group Home Placements;**
- ▶ **Community Recovery Services (CRS); and**
- ▶ **Comprehensive Community Services (CCS)**

• CCS Program Directory — *NEW*

Call (414) 257-8095 for guidance on accessing SAIL services for yourself or someone else. Qualified mental health professionals may also refer an eligible individual by completing the SAIL referral form, available in the Forms section of this site.

NOTE: The provider will not receive a copy of this Decision. In order to have the personal care services involved here approved, the Petitioner must provide a copy of this Decision to the provider. The provider must then submit a new prior authorization request to receive the approved coverage.

CONCLUSIONS OF LAW

That the evidence offered on behalf of Petitioner is not sufficient to demonstrate that the PCW services requested here meet the standards necessary for Medicaid payment.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN

INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 2nd day of January, 2015

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 2, 2015.

Division of Health Care Access and Accountability