



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/161677

PRELIMINARY RECITALS

Pursuant to a petition filed October 30, 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 telephonic hearing was held on December 04, 2014.

The issue for determination is whether the OIG correctly modified the personal care worker (PCW) hours requested for petitioner pursuant to her prior authorization (PA) request.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

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

By written submittal of: Robert Derendinger
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On September 23, 2014, petitioner's PCW provider, Knapps Development Inc., requested prior authorization for 16 hours per week of PCW services for petitioner, as well as 24 hours per year of PRN time (PA # [REDACTED]) starting on October 1, 2014.
3. By a notice dated October 21, 2014, the OIG modified the PA request allowing 10.5 hours weekly of PCW time.

DISCUSSION

MA coverage of PCW services is described in the Wis. Adm. Code, §DHS 107.112. Covered services are specified in subsection (1), and are defined generally as "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." Examples of covered services are assistance with bathing, with getting in and out of bed, with mobility and ambulating, with dressing and undressing, and meal preparation. In determining the number of PCW hours to authorize the OIG uses that standard along with the general medical necessity standard found at Wis. Adm. Code, §DHS 101.03(96m). It provides:

“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).

To determine the number of PCW hours to authorize the OIG uses the Personal Care Screening Tool, a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The screening tool allots a specific amount of time in each area the recipient requires help, which the OIG's reviewer can then adjust to account for variables missing from the screening tool's calculations.

The OIG modified the PA because it determined that the documentation submitted with it did not support the medical necessity of the total hours requested. In reviewing the information submitted by the

provider, I can see how the OIG was unable to determine that all of the requested PCW services were medically necessary. The information submitted does not show that the petitioner's doctor ordered time for more than once weekly assistance with her TEDS, contrary to petitioner's testimony that it should be done at least 3 times per week. Also, petitioner's testimony is that she has been living alone for about 5 years. This is contrary to the information collected in the Personal Care Screening Tool and the Long Term Functional Screen which show that she lives at home with her spouse. Additionally, she testified to her need for additional help in bathing due to her incontinence and her inability to provide her own incontinence cares. This again conflicts with the information submitted with the PA.

The problem here relates to the fact that the medical necessity for the PCW cares as requested is not documented pursuant to MA rules and policy, which provide:

(3) OTHER LIMITATIONS.

(a) Personal care services shall be performed under the supervision of a registered nurse by a personal care worker who meets the requirements of s. DHS 105.17 (3) and who is employed by or is under contract to a provider certified under s. DHS 105.17.

(b) Services shall be performed according to a written plan of care for the recipient developed by a registered nurse for purposes of providing necessary and appropriate services, allowing appropriate assignment of a personal care worker and setting standards for personal care activities, giving full consideration to the recipient's preferences for service arrangements and choice of personal care workers. The plan shall be based on the registered nurse's visit to the recipient's home and shall include:

1. Review and interpretation of the physician's orders;
2. Frequency and anticipated duration of service;
3. Evaluation of the recipient's needs and preferences; and
4. Assessment of the recipient's social and physical environment, including family involvement, living conditions, the recipient's level of functioning and any pertinent cultural factors such as language.

(c) Review of the plan of care, evaluation of the recipient's condition and supervisory review of the personal care worker shall be made by a registered nurse at least every 60 days. The review shall include a visit to the recipient's home, review of the personal care worker's daily written record and discussion with the physician of any necessary changes in the plan of care.

See Wis. Adm. Code §DHS 107.112(3)(a)-(c).

In sum, it is the provider's responsibility to justify the need for the service. Wis. Adm. Code, §DHS 107.02(3)(d)6 (emphasis added). There is no question that the rules require doctor's orders to verify that the PCW services are so authorized. One such rule specifically states that PCW services "shall be provided upon written orders of a physician." See Wis. Adm. Code §DHS 107.112(1)(a); see also Wis. Adm. Code, §DHS 107.02(2m)(a)19. The terms and conditions under which providers of health care services are certified for participation in the MA program also *require* that the RN supervisor secure written orders from the client's physician. See Wis. Adm. Code §DHS 105.17(2)(b)2. Without the proper orders, the MA program cannot authorize hours for those cares. This relates to the fact that PCW services must be performed according to a written plan of care for the recipient and developed by a registered nurse for purposes of providing necessary and appropriate services. See Wis. Adm. Code §DHS 107.112(3)(b). The plan of care must be based on the registered nurse's visit to the recipient's home and an evaluation of the recipient's condition and record, and a discussion with the physician as to any necessary changes in the plan of care. *Id.*

While I do not doubt petitioner has limitations, they must be identified and verified so that petitioner's conditions are clear to the agency. I therefore must conclude that the OIG was correct in its modification

of the PA request. As in all prior authorization request cases, the petitioner bears the burden of proving that all of the services she requests are necessary, and that has not been done.

Petitioner may wish to share this decision with her provider. Her provider may be able to file an amendment to the prior authorization, or a new PA request, correcting the problems and explaining more fully the need for the hours and clearing up the information in the records versus petitioner's testimony. This may be particularly true if petitioner is living alone, since that impacts the amount of time she would receive for services incidental. I suggest that the petitioner, her provider, and the medical specialists she sees review her PCW needs and that they provide increased documentation to support a new request for additional ongoing PCW time. This is not intended to diminish the challenges petitioner faces, but rather to explain that the documentation must be there to support the requested services.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The OIG correctly modified petitioner's request for PCW hours as the preponderance of the evidence submitted did not show the medical necessity of the services as requested.

THEREFORE, it is

ORDERED

The petition for review herein be 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 12th day of January, 2015

\sKelly Cochrane
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 12, 2015.

Division of Health Care Access and Accountability