



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact

DECISION

MPA/162240

PRELIMINARY RECITALS

Pursuant to a petition filed November 24, 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 telephone hearing was held on December 30, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly modified the petitioner's PA Request for 39.5 hours per week of Personal Care Worker (PCW) service hours to an approved sum of 8.75 hours per week.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact
Redact

Respondent:

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

Written Appearance By: Redact, R.N.
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a 58 year-old male resident of Milwaukee County who lives with family members and is certified as eligible for Medical Assistance.
2. The petitioner has diagnoses of: obstructive sleep apnea, chronic obstructive pulmonary disease (COPD), chronic back pain, gouty arthritis, hypogonadism, anxiety, depression, erectile dysfunction, hypertension, hypercholesterolemia, and seizure disorder. He takes approximately

18 prescription medications, most at least daily. He is 5'3" tall, weighs 262 lbs., and has a body mass index of 46.58.

3. The petitioner has been assessed in a Home Health Certification and Plan of Care, as possessing functional limitations including endurance, shortness of breath with minimal exertion, dressing, bathing, and grooming. He utilizes a cane at home, a CPAP machine, and a nebulizer. He was described in this assessment as "up as tolerated".
4. On August 29, 2014, [Redact] requested 39.5 hours per week PCW services for 53 weeks, with a start date of August 28, 2014, PA Request No. [Redact], at a total cost of \$40,810. The proposed regimen was for cares in the home from 8-11 in the morning and 6-8:30 in the evening, 7 days per week.
5. The Personal Care Screening Tool (PCST) performed for Allegiance by RN [Redact, Redact] found that the petitioner needs partial physical assistance of another to; bathe; dress his upper body, dress his lower body, and groom himself twice per day. He requires assistance from another to don anti-embolism stockings, bilateral hand braces and a back brace. She found that he can feed himself but requires meal prep and setup for all three meals; needs reminders to take medications three times per day; and that he needs assistance to transfer or move about the home. She found he can generally toilet himself, but requires assistance to toilet or change a hygiene product once per day. Nurse [Redact] determined that his seizure disorder, with at least one seizure in the past six months, justified a finding that he has medical conditions that interfere with PCW cares or present a unique challenge to PCW cares requiring additional time to adequately perform cares.
6. By a notice dated October 28, 2014, the Division of Health Care Access and Accountability ("DHCAA") granted 8.75 hours per week for 53 weeks.
7. In reaching this modified reduction, the Department and its Nurse Consultant(s) reviewed the petitioner's provider submissions and concluded that physical exams revealed the petitioner has essentially all joints have normal range of motion, all extremities have normal range of motion, that he has normal posture and gait, normal strength, and intact sensation. That during these exams the petitioner denied symptoms of fever, malaise, chest pain, shortness of breath or dyspnea, and negative Romberg testing results. He was also found on these exams to display a normal mood, affect, attention span and concentration. On these occasions he did report complaints of bilateral edema, productive cough, and upper respiratory infection. These results were generally consistent during examinations on July 10, 2014, August 14, 2014, and September 29, 2014. See, Exhibit #1, attachments Nos. 8, 9 and 6.
8. The Nurse Consultant provided a summary of the PCW service times that he concluded the clinical evidence and PA documentation supported, in the Summary at pp. 6-9. Essentially, Nurse [Redact] determined that the petitioner needs 210 minutes per week for assistance with bathing; 140 minutes per week for assistance with dressing his upper and lower body. He found that assistance with placing anti-embolism stockings was not a covered service because it was not prescribed under written orders in the Plan of Care. See, Exhibit #1, attachment No. 2. The Nurse Consultant allocated 70 minutes per week for grooming, discounting the PCST report of bilateral pain, grip weakness, and visual impairment, based upon the three clinical exams described in Finding #7, above. [Redact] did not allow any minutes for meal setup where meal preparation exists already; no minute for mobility or transfers based upon the same clinical exams and the lack of documentation of a history of falls or dizziness; no minutes for toileting for lack of documentation of the need for actual assistance from a worker (no documentation that the PCW is actively helping with toileting), behavior or medical conditions (because mere encouragement for cares to be initiated is not covered), or seizures (because the last one was reported more than 180 days before the PCST). Finally, Nurse [Redact] did allow 105 minutes per week for services incidental to tasks based upon the program requirement that a person living with others is limited to such services for ¼ of the total time of assistance required

from a PCW, for assistance with activities of daily living (ADL) and/or medical oriented tasks (MOT).

9. On November 24, 2014, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the modification action taken by the DHCAA.

DISCUSSION

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.” Wis. Admin. Code §DHS 107.112(1)(a). Covered services include the following:

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(b).

The 8.75 hours per week that were granted under modification were for activities such as assistance with bathing, upper and lower body dressing, grooming, and services incidental to tasks.

I have reviewed the clinical documentation, including Exhibits #1, #2 & #3. These included the Nurse Consultant’s Summary Letter of December 22, 2014, with 15 attachments, the PA Request with the PCST, Plan of Care, Personal Cares Addendum, and multiple physician and medical exam notes.

Frankly, the list of medical conditions and medications, while lengthy, do not support or justify the bulk of the nearly 40 hours per week of PCW services requested. Many of the petitioner’s problems in performing activities of daily living are related to his high body mass index and concurrent COPD. Diet, exercise, and self cares seem to be the best way to address his care needs. He evidently has full range of motion, strength, and normal gait. Based upon the clinical examination finding reviewed by the Nurse Consultant, I can only conclude that the home health agency nurse’s PCST assessment was the subject of a great deal of “puffing” of his needs and time of cares, as well as some exaggeration of his history of seizures, dizziness and falls; and of the time it takes to complete cares. Falls were not documented as actually occurring with any frequency and the last seizure was more than 180 days ago. It would not be unusual for someone with hypertension and a high body mass index to experience dizziness due to orthostatic hypotension when rising from bed or standing; and this can be ameliorated by doing so slowly and with care; and installing and using grab bars at home. He also seems to be able to ambulate, toilet and feed himself almost normally due to normal range of motion and strength, and without the need for regular hands-on assistance from another.

The preponderance of the evidence in this record causes me to conclude that the Department has correctly modified the 39.5 hours of PCW services per week to 8.75 hours per week. The Department modification must be sustained on this record, and the instant appeal dismissed.

Nothing prevents the petitioner and his providers from filing a new Prior Authorization Request in the future and more fully establishing with clinical evidence and assessment that he needs more than 8.75 hours per week of PCW services. The evidence submitted in this record does not do so.

CONCLUSIONS OF LAW

That the DHCAA correctly modified the PA request for PCW services from 39.5 hours per week to 8.75 hours per week.

THEREFORE, it is **ORDERED**

That the petition for review herein be and the same is hereby 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 Madison,
Wisconsin, this 22nd day of January, 2015

\sKenneth D. Duren, Assistant Administrator
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 22, 2015.

Division of Health Care Access and Accountability