

FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/162243

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 telephonic hearing was held on January 06, 2015, at Milwaukee, Wisconsin. The petitioner was represented by her sister, [REDACTED] [REDACTED], during the hearing.

During that hearing, petitioner's representative requested that the record be held open for documents to be submitted to the Division of Hearings and Appeals, and then for those documents to be sent to the Office of the Inspector General (OIG) for a reconsideration decision with an opportunity for a reply by Ms. [REDACTED].

This Administrative Law Judge (ALJ) sent a February 14, 2015 cover letter to Mr. Derendinger at the Office of the Inspector General (OIG) with a copy of the petitioner's November 24, 2014 Initial Evaluation by Milwaukee Center for Independence (Exhibit 2), and a November 20, 2014 letter written by [REDACTED] [REDACTED] responding to OIG's reduction of petitioner's PCW request (Exhibit 3). In that same letter, this ALJ requested that Mr. Derendinger review the enclosed documents, and submit a reconsideration summary to me at the Division of Hearings and Appeals by February 25, 2015, with a copy of that reconsideration summary letter to be sent to the petitioner's representative, [REDACTED] [REDACTED]. The petitioner's representative was granted until March 4, 2015 to submit to DHA any written response to Mr. Derendinger's reconsideration summary.

Mr. Derendinger sent a February 20, 2015 reconsideration to DHA (and to petitioner) in which he explained based upon the new evidence submitted by petitioner that OIG increased and approved the petitioner's PCW services from 21 hours to 28 hours per week. See Exhibit 4. The requested PCW was only slightly higher at 29.75 hours per week (only 1.75 hours more PCW than the amount approved by OIG). The petitioner's representative did not submit any response to OIG's reconsideration to DHA by March 4, 2015 or even by the date of this decision.

The issue for determination is whether the Department correctly modified (reduced) the petitioner's prior authorization (PA) request for personal care worker (PCW) services from 29.75 hours per week to 28 hours per week, and then approved the 28 hours per week.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
c/o ██████████
██████████
██████████

Representative:

██████████, sister of petitioner
██████████
██████████

Respondent:

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

By: Robert Derendinger, nurse consultant
Office of the Inspector General (OIG)
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ██████████) is a 62 year old female resident of Milwaukee County.
2. The petitioner is diagnosed with arthritis, mental retardation and incontinence. Her functional limitations are bowel/bladder incontinence, endurance, ambulation, and developmentally delayed. She uses a cane for mobilization.
3. On or about September 11, 2014, the petitioner's provider, Community Home Health Care, Inc., requested prior authorization (PA) for MA coverage of personal care worker (PCW) of 29.75 hours per week plus 24 hours per year to be used as needed (PRN (basis. See Exhibit 2.
4. The petitioner's Personal Care Screening Tool (PCST) was completed by screener Rosie Jackson, RN from Community Living Alliance, on September 9, 2014 at petitioner's home. See Exhibit 1. In that PCST, the screener generally evaluated the petitioner's needs for partial physical assistance with bathing, dressing her upper body with constant supervision twice daily, and needs partial assistance to dress her lower body twice per day. ██████████ needs full assistance with grooming. She feeds herself, but needs assistance with meal preparation and setup from a caregiver. Petitioner is able to move about the home by herself with a cane. She needs assistance with incontinence care about four times daily. She also needs physical assistance with transfers, and to take her medications three times daily. The petitioner was not documented as having behaviors or medical conditions which interfere with the PCW's assistance with cares or present unique challenges which results in extra PCW time to perform cares.
5. Based upon his Personal Care Activity Time Allocation Table and her PCST, the petitioner was approved for the following reduced amount of 21 hours of PCW services per week: a) Bathing – 210 minutes per week; b) Dressing of upper and lower body – 140 minutes per week; c) Grooming 210 per week; d) Eating Assistance – 0 minutes per week; f) Mobility – 0 minutes per week because petitioner is generally independent with mobility with a cane; g) Incontinence – 420 minutes per week for incontinence four times daily; h) Medication Assistance – 0 because the submitted POC does not included any orders for the PCW to administer medications; i) Transfers

0 – petitioner is noted to be independent with mobility and she does not have any neurological deficits that would prevent her from completing transfers independently; and j) Services Incidental to Tasks – 245 minutes per week for ADLs and Medically Oriented Services (MOT). The petitioner’s total ADL and MOT were 21 hours per week.

6. On review of the PA Request, the Office of the Inspector General (OIG) modified the prior authorization request from the requested 29.75 to 21.00 PCW hours per week based upon the Personal Cares Screening Tool (PCST) assessing the petitioner’s PCW needs.
7. OIG issued a letter Notice to the petitioner’s representative informing her that petitioner’s PA requested personal care worker services had been reduced from 29.75 to 21 hours per week, and then approved as modified.
8. While the record was held open, petitioner submitted to DHA and OIG additional clinical information and letters (Exhibits 2 and 3) provided by petitioner’s sister, [REDACTED] [REDACTED] in support of petitioner’s additional PCW services. See above Preliminary Recitals.
9. In his well-organized, detailed February 20, 2015 reconsideration to DHA, OIG’s nurse consultant, Mr. Robert Derendinger, stipulated to the increase in petitioner’s PCW services **from 21 to 28 hours per week** based upon the new clinical evidence, as itemized on page 2 of that reconsideration (additional PCW time for mobility and transfers). See Exhibit 4.
10. The petitioner did not submit any response to OIG’s February 20, 2015 reconsideration by March 4, 2015 or even by the date of this decision. See above Preliminary Recitals.

DISCUSSION

The Office of the Inspector General (OIG) may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat. §§ 49.46(2) and 49.47(6)(a), as implemented by Wis. Admin. Code Ch. DHS 107. Some services and equipment are covered if a prior authorization request is submitted and approved by the Division in advance of receiving the service. Finally, some services and equipment are never covered by the MA program.

In the case of PCW services, MA pays only for medically-oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his place of residence in the community. Wis. Admin. Code § DHS 107.112(1)(a). **Covered PCW services include only 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(1)(b).

Further, PCW services must be provided according to a written plan of care that is based on an evaluation made by an RN who has visited the recipient's home. Wis. Admin. Code §§ DHS 107.112(1)(a) & (3)(b).

During the January 6, 2015 hearing, the petitioner's representative, her sister [REDACTED] [REDACTED], asserted petitioner needed more than the reduced amount of 21 hours per week of PCW hours approved by OIG. Petitioner was able to specifically indicate areas where the approved 21 hours of PCW hours was insufficient to meet the petitioner's PCW needs in some of the above 13 covered PCW services.

While the record was held open, petitioner submitted documentation which did support specific needs for the petitioner's PCW hours to be increased above 21 hours per week. In OIG's February 20, 2015 Reconsideration, OIG's nurse consultant Derendinger stipulated to the increase in petitioner's PCW services **from 21 to 28 hours per week** based upon the new clinical evidence, as itemized on page 2 of that reconsideration. See Exhibit 4. The petitioner's representative did not submit any response to support that petitioner needed the slight increase from 28 to 29.75 hours per week. See above Preliminary Recitals. The petitioner was unable to establish that she has any covered PCW needs that are not being met by the increased amount of 28 PCW hours approved by the Department. Accordingly, based upon review of the entire hearing record, I conclude that the Department correctly modified (reduced) the petitioner's prior authorization (PA) for personal care worker (PCW) services from 29.75 hours per week, and then approved the 28.0 hours per week.

CONCLUSIONS OF LAW

The Department correctly modified (reduced) the petitioner's prior authorization (PA) for personal care worker (PCW) services from 29.75 to 28 hours per week, and then approved the 28.0 hours per week.

THEREFORE, it is

ORDERED

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 April, 2015

\sGary M. Wolkstein
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 April 22, 2015.

Division of Health Care Access and Accountability