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

In the Matter of:

██████████
██████████
████████████████████

DECISION

MPA/162523

PRELIMINARY RECITALS

Pursuant to a petition filed December 9, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General [“OIG”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on January 7, 2015.

The issue for determination is whether OIG was correct to modify Prior Authorization [“PA”] # ██████████ by approving 46.75 hours per week of Personal Care Worker [“PCW”] time instead of the 56 hours per week that was requested.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
████████████████████

Respondent:

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

BY: Cindy Zander, RN, BSN, Nurse Consultant
Office of the Inspector General
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (36 years old) is a resident of Milwaukee County, Wisconsin.
2. Petitioner lives with her family and regularly attends activities out of her home 5 days per week.
3. Petitioner has diagnoses of spina bifida, neurogenic bladder, neurogenic bowel, malaise, and fatigue; her functional limitations include bowel and bladder, contracture, paralysis, endurance, and dyspnea; she uses a shower chair and a wheelchair.
4. On October 8, 2014 petitioner's provider, Independence First of Milwaukee, Wisconsin, filed PA # [REDACTED] dated October 8, 2014 with OIG requesting 224 units (56 hours) per week of PCW services and 56 units (14 hours) per week of PCW travel time for 53 weeks with a start dated of December 2, 2014 at a cost of \$72,345.00.
5. OIG modified P.A. # [REDACTED] by approving 187 units (46.75 hours) per week of PCW time instead of the 224 units (56 hours) that was requested; OIG sent a letter to petitioner dated November 6, 2014 and entitled *BadgerCare Plus Notice of Appeal Rights* informing petitioner of the modification.
6. A *Personal Care Screening Tool* ["PCST"] completed on September 22, 2014 by a Registered Nurse ["RN"] states the following concerning petitioner's Activities of Daily Living ["ADLs"]: BATHING: totally bathed by another person; DRESSING: depends entirely upon another person; GROOMING: depends entirely upon another person; EATING: feeds self (but requires intermittent supervision or cueing); MOBILITY IN HOME: has power wheelchair but requires assist through narrow doorways; TOILETING: requires physical help from another person (has ostomy, catheter bag, and requires digital stimulation); TRANSFERRING: needs constant help from another person (uses slide board); MEDICATION ASSISTANCE: none needed (does not take any medication); the PCST allocated 111 units (27.75 hours) per week of ADL assistance for petitioner.
7. Based on the PCST, petitioner's *Plan of Care* ["POC"], the *Personal Care Addendum* ["PAC"], and the *Personal Care Activity Time Allocation Table* ["PCATAC"] OIG allotted 187 units (46.75 hours) per week of PCW time for petitioner.

DISCUSSION

By law, MA pays only for medically necessary and appropriate health care services when provided to currently eligible MA recipients. Wis. Admin. Code § DHS 107.01(1) (February 2014); See also, Wis. Stat. §§ 49.46(2) & 49.47(6) (2013-14). 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 or her place of residence in the community. Wis. Admin. Code § DHS 107.112(1)(a) (February 2014). Further, some medically oriented tasks may be covered as PCW services if the PCW has received special training in performing the task. Wis. Admin. Code §§ DHS 107.112(2)(b) & 107.11(2)(b)1. (February 2014). PCW services must be performed according to a written plan of care developed by an RN. The plan must be based on the RN's visit to the recipient's home and must be reviewed by the RN at least every 60 days via a home visit. Wis. Admin. Code §§ DHS 107.112(3)(b) & (c) (February 2014).

In addition to the medically oriented tasks allowed for PCW's that have received special training, the only PCW services covered are 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) & (4)(f) (February 2014).

As with any eligibility denial, the burden is on petitioner to show that he is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to do so.

OIG based its determination to grant 46.75 hours per week on its evaluation of the PCST, petitioner's POC, the PAC, and the use of the PCATAC. Petitioner offered no evidence other than her own testimony and that of her paid caregiver (who is also her sister). They testified that petitioner needed more PCW hours because "I can do nothing on my own" and "she needs a lot of help and cannot do anything on her own." Their testimony was general in nature. Petitioner failed to provide any basis upon which to conclude that any specific amount of PCW time was required. OIG's determination was based on the PCATAC and is reasonable. In the absence of additional evidence OIG's determination must be affirmed.

Petitioner may, if she wishes, have her provider file another PA request along with additional documentation that supports the specific number of PCW hours that she is requesting.

CONCLUSIONS OF LAW

For the reasons explained above, DCHAA was correct to modify PA # [REDACTED] by approving 46.75 hours per week of PCW time instead of the 56 hours per week that was requested.

NOW, 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.

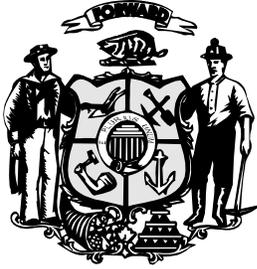
APPEAL TO COURT

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 17th day of February, 2015

\sSean P. Maloney
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 February 17, 2015.

Division of Health Care Access and Accountability