



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact
Redact

DECISION

MPA/164799

PRELIMINARY RECITALS

Pursuant to a petition filed March 18, 2015, 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 April 14, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department erred in its modification of PA request # Redact for PCW services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact
Redact
Redact

Respondent:

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

By: Redact, RN, BSN (written appearance only)
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Milwaukee County.
2. On 9/11/14, petitioner's provider filed a PA request for PCW services in the amount of 29.75 hours per week plus an additional 24 hours per year PRN.

3. Petitioner's diagnoses include diabetes, hypertension, arthritis in hands, and his medical history is significant for left knee replacement, cataract surgery, and the loss of sight in his left eye.
4. The PA was denied by the respondent on February 3, 2015.

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).

Personal care workers can spend no more than one-third of their time performing housekeeping activities. Like all medical assistance services, PCW services must be medically necessary and cost effective. Wis. Admin. Code, §DHS 107.02(3)(e)1 and 3. At hearing on the issue of modification of a PA request, it is the burden of petitioner or the provider to establish the need and appropriateness of the requested services. Petitioner has done neither based on this record.

The reason that the DHCAA now is looking closely at PCW requests is evident in a case such as this one. Petitioner did not provide specific times necessary for providing the PCW services, but instead testified that the PCW time was needed because of petitioner had previously been approved for PCW services since at least 2013, and his circumstances have not changed. Petitioner testified that some of the medical adaptive devices, which were identified by his provider, have not, yet, been supplied; he acknowledged that these devices would be of use to him. Petitioner's testimony described a fairly independent daily living environment for petitioner. He and his caregiver, who is his daughter, described relatively minor assistance with petitioner's activities of daily living. Without a better way to quantify the need and time for services, however, I find it difficult to award time. Furthermore, one issue with family members being the personal care workers is that they may take more time to do care tasks due to extra carefulness or inexperience, and thus the Department has set maximum times for a typical care worker. In addition, while it is true that PCW hours were authorized in the past, this request was the first one reviewed thoroughly by the DHCAA.

Petitioner should be aware that if his provider can show a medical need for more time, it can always submit a new prior authorization with the requisite evidence to show the need for the additional time. In that regard, petitioner should ensure that his provider receives a copy of the respondent's April 8, 2015 correspondence (Exhibit 4) in order that it may address the concerns raised therein. However, based upon the evidence before me I cannot conclude that the denial of petitioner's request for PCW services was wrong.

CONCLUSIONS OF LAW

The DHCAA's denial of the request for PCW hours was appropriate based upon petitioner's medical needs and the Department's policies for PCW approval.

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 12th day of June, 2015.

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 12, 2015.

Division of Health Care Access and Accountability