



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
Redact
[REDACTED]

DECISION

HMO/165700

PRELIMINARY RECITALS

Pursuant to a petition filed April 23, 2015, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability (DHCAA or Division) in regard to Medical Assistance (MA), a hearing was held on May 13, 2015, by telephone.

The issue for determination is whether the Division's agent, an HMO, correctly denied personal care worker (PCW) hours requested by the petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
Redact
[REDACTED]

Respondent:

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

By written submission of [REDACTED] *Redact*, analyst
Division of Health Care Access and Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. She is certified for MA or BadgerCare Plus, and receives her services through an HMO.
2. In 2015, the petitioner requested that her MA HMO provider her with two hours of PCW time daily. On March 2, 2015, the HMO issued written notice that it was denying that request. An

HMO grievance committee reviewed the matter, and upheld the denial. A Department of Health Services' nurse also reviewed the request, and concurred with the HMO's denial.

3. The HMO's basis for service denial was that the PCW hours were not medically necessary. In particular, the Division concluded that this level of PCW services was not needed because the petitioner did not require physical assistance to perform her "activities of daily living" (ADLs).
4. The petitioner, age 52, resides with her family in an apartment complex in the community. It was anticipated that a grandchild would serve as the PCW. The petitioner has diagnoses of controlled diabetes type II, diabetic peripheral neuropathy, obesity, GERD, asthma, chronic low back pain, hypertension, orthostatic hypotension, goiter, focal nodular hyperplasia of the liver, Nutcracker esophagus, Irritable Bowel Syndrome, opiate dependence, and history of DVT in 2005. She has functional limitations in the areas of endurance and ambulation.

A state functional screening review was performed by a nurse for the petitioner in February 2015. The screening program concluded that the petitioner requires *zero* hours of PCW care weekly. The results declared that the petitioner did not require PCW physical assistance with the following ADL tasks: dressing, grooming, toileting, transfers, and ambulation. She feeds herself. The petitioner takes oral medications and insulin independently. The review noted that some assistance might be needed to enter/exit the shower, but there was no evidence that the petitioner had attempted to do this with a grab bar. There was also no evidence that she had tried and failed to use other showering adaptive aids.

5. The petitioner could use a shower grab bar for shower entry/exit, and a shower chair while in the shower. By the time of the hearing, she had received a shower chair. She is able to perform bathing, dressing, eating, grooming, toileting, and transfers independently. She ambulates independently with either a cane or walker. The petitioner would benefit from the services of others to purchase her food and do laundry.

DISCUSSION

Personal care worker service (PCW), as defined at Wis. Admin. Code §DHS 107.112(1), is an MA-covered service, subject to prior authorization after the first 250 hours per calendar year. Wis. Admin. Code §DHS 107.112(2) (May 2009). In determining whether to approve such a service request, the Division employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be a medical necessity, appropriate, and an effective use of available services. *Id.* The Division argues that the authorization criteria have not been satisfied for the reason given in Finding #3 above. The petitioner bears the burden of establishing, by a preponderance of the credible evidence, that all of the requested care is needed.

The Department asserts that it has reduced the PCW time to the amount it believes is necessary to perform purely PCW tasks. The petitioner contends that s/he needs all of the requested care time.

The state code does restrict MA-covered PCW tasks as follows:

(b) Covered personal care services are:

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;
- ...

Wis. Admin. Code, §DHS 107.112(2)(b).

The petitioner testified in support of PCW time, citing her chronic pain and inability to stand for more than a few minutes. However, the observations of the independent screening nurse do not corroborate that self-serving testimony. Additionally, a nurse practitioner examination on March 31, 2015, revealed normal strength and reflexes in the upper extremities, and full range of motion in both shoulders, which were non-tender. Regarding the petitioner's chronic pain, the practitioner indicated that it is best treated with a "multidisciplinary approach that involves an *increase* in physical activity to prevent de-conditioning and worsening of the pain cycle." Therefore, the denial is upheld.

CONCLUSIONS OF LAW

1. The petitioner requires zero PCW hours weekly at this time.

THEREFORE, it is

ORDERED

That the petition is 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 2nd day of July, 2015

\sNancy J. Gagnon
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 July 2, 2015.

Division of Health Care Access and Accountability