



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/167175

PRELIMINARY RECITALS

Pursuant to a petition filed July 08, 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 hearing was held on August 10, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether DHS correctly denied Diversity Home Health Services's request for prior authorization to provide Personal Care Worker services to the Petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] with assistance from her
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: OIG by letter

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. On March 17, 2015, Diversity Home Health Services, LLC (Diversity) completed a Personal Care Screening Tool (PCST) for the Petitioner which assessed the Petitioner's need for personal care assistance as follows:

Bathing – Level D
 Dressing – Level D
 Grooming – Level E
 Eating – Level C
 Mobility – Level C
 Toileting – Level B
 Transfers – Level C

(Exhibit 3, pgs. 10-15)

3. The PCST also indicated that the Petitioner requires medication reminders and has behaviors that interfere with the provision of personal care services. (Id.)
4. On March 18, 2015, Diversity, on behalf of the Petitioner, submitted a prior authorization request for 92 units (23 hours) per week of personal care worker (PCW) hours, for 53 weeks at a cost of \$30,475. They also request six registered nurse home visits at a cost of \$300. (Exhibit 3, pg. 9)
5. On June 26, 2015, the Department of Health Services (DHS) sent the Petitioner and Diversity notices advising them that the request for services was denied. (Exhibit 2, pgs. 120-125)
6. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 8, 2015. (Exhibit 1)

DISCUSSION

Personal Care Services are a covered service by Medicaid. They are defined as, “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. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care.” *Wis. Admin. Code DHS §107.112(1)(a)*.

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under *Wis. Admin. Code DHS §107.11(2)*, that are needed to treat a recipient's medical condition or to maintain a recipient's health. *Wis. Admin. Code DHS §107.112(b)*

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria. Estate of Gonwa ex rel Gonwa v. Wisconsin Dept. of Health and Family Services, 265 Wis.2d 913, 668 N.W.2d 122, 2003 WI App. 152.

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, Diversity, completes a personal care screening tool (PCST). A link to the blank form and instructions for completing the form can be found in the on-line provider handbook located, under topic number 3165 on the Forward Health website:

<https://www.forwardhealth.wi.gov/WIPortal>

In general, seven activities of daily living (ADLs) are reviewed: 1) Bathing, 2) Dressing, 3) Grooming, 4) Eating, 5) Mobility, 6) Toileting, and 7) Transfers. In addition, Medically Oriented Tasks (MOTs), if any, are examined.

The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table. The Personal Care Activity Time Allocation Table is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165*.

Diversity, on behalf of Petitioner, requested 23 hours per week of PCW services. According to the letter from the Department of Health Services, Office of the Inspector General, DHS denied the request for PCW services, because Petitioner's medical records did not support the claims made in the Personal Care Screening Tool.

Bathing

The PCST indicated that the Petitioner needed assistance with bathing at level D, meaning she needs assistance with lower body bathing, application of lotion, needs physical assistance getting in and out of the tub or requires a bed bath and assistance with washing her lower body. (See page 5 of the PCST Instructions¹) The PCST stated that the Petitioner needs assistance because of back pain, a rotator cuff repair and because she has a history of falling and light headedness due to her medications and migraines.

In a physical therapy evaluation dated January 19, 2015, the Petitioner reported that she does not have any difficulties with bathing. (Exhibit 2, attachment 9)

The most recent medical records are dated April 6, 2015. (Exhibit 3, pgs. 116-118). According to that record, the Petitioner did not report having any fatigue; she had no back pain, no muscle aches and no localized joint pain or swelling. (Id.) Although the April 6, 2015 record notes a history of fainting, it noted no gait unsteadiness.

The medical records contradict Diversity's claim that the Petitioner is unable to bathe herself due to back or shoulder pain. Petitioner's history of fainting might require intermittent supervision to ensure her safety, but the medical records do not indicate when Petitioner last fainted or how frequently that occurs.

At most, Petitioner would be marked as needing assistance a level B, which is for individuals who need intermittent supervision to ensure personal safety. (Page 5 of the PCST Instructions) However, Wisconsin medical assistance does not cover PCW hours for individuals who need assistance with bathing at level B. So DHS correctly denied time for this task.

Dressing

The PCST indicated the Petitioner needed assistance with dressing because she has decreased range of motion, has difficulty bending and has difficulty maintaining her balance.

In the January 19, 2015 physical therapy evaluation, the Petitioner reported that she does not have any difficulties with getting dressed. (Exhibit 2, attachment 9)

The most recent medical records are dated April 6, 2015. (Exhibit 3, pgs. 116-118). According to that record, the Petitioner did not report having any fatigue; she had no back pain, no muscle aches and no localized joint pain or swelling. (Id.) Although the April 6, 2015 record notes a history of fainting, it noted no gait unsteadiness and no coordination problems.

Based upon the foregoing, it is found that Petitioner's medical records do not support a need for PCW assistance with dressing. Again, at most, the Petitioner might need intermittent supervision to ensure personal

¹PCST Instructions can be viewed on-line at:

<http://www.dhs.wisconsin.gov/forms/F1/F11133a.pdf>

safety, which would put her at assistance level B, but Wisconsin medical assistance does not cover PCW services for individuals who need assistance at level B. (See the Personal Care Activity Time Allocation Table) Further, given the lack of information regarding the last time the Petitioner fainted and the frequency of her fainting spells, even assessing Petitioner at Level B, is questionable. Accordingly, it is found that DHS correctly denied PCW coverage for the task of dressing.

Grooming

The PCST indicates that the Petitioner needs assistance with grooming at level E, because she cannot brush her hair or bend down to clip her toe nails, because of the rotator cuff repair and back pain.

However, as discussed above, the Petitioner's medical records contradict this, stating that she does not have any back or joint pain. Further, Petitioner's PCW offered inconsistent testimony, in one instance indicating that the Petitioner is able to wash her face, but then stating that the Petitioner is unable to brush her hair or teeth. This testimony is troubling, given that in the January physical therapy evaluation, the Petitioner indicated that she did not have difficulty with bending her elbow, gripping objects or using her fingers.

Based upon the foregoing, it is found that the record does not support the need for PCW assistance with grooming and that DHS correctly denied PCW time for this task.

Eating

The Petitioner does not dispute the fact that she is able to feed herself. As such, it is found that DHS correctly denied PCW time for this task.

Mobility

The PCST indicated that the Petitioner needs assistance at level C, in order to move about her home safely, meaning she requires the constant presence of a PCW to provide immediate physical intervention during the task. Specifically, the PCST stated that the Petitioner needs assistance, because she has balance issues and a history of falling due to unsteadiness.

The January 2015 physical therapy evaluation indicates that the Petitioner does not have any difficulty with walking. (Exhibit 2, attachment 9)

The April 2015 medical records indicate no convulsions, no tremor, no gait unsteadiness and no coordination problems. The record notes a history of fainting, but no history of falls due to unsteadiness. Again, there is no information in the medical documentation indicating that the Petitioner has fainted recently. (Exhibit 3, pgs. 116-118).

Because the Petitioner's medical records contradict the information in the PCST, and do not support a need for assistance with mobility, DHS correctly denied PCW time for this task.

Toileting

The PCST indicated that the Petitioner needs assistance with toileting at level B, meaning she needs reminders to wipe, cueing or instructions to complete the task, or intermittent supervision to ensure completion of the task. Petitioner's PCW testified somewhat inconsistently with the PCST, stating that Petitioner is able to toilet herself independently, but is supervised in case she loses her balance. (See page 9 of the PCST instructions)

Even if the claims made in the PCST are accepted as true, Wisconsin medical assistance does not cover PCW services for individuals who need assistance with toileting at level B. (See the Personal Care Activity Time Allocation Table) Moreover, Petitioner's medical records did not note any issues with maintaining balance and they stated that Petitioner had no memory lapses or other memory loss. (Exhibit 3, pgs. 116-117)

Accordingly, it is found that DHS correctly denied time for the task of toileting.

Transfers

The PCST indicated that the Petitioner needs assistance with transfers at level C, meaning she needs physical assistance from the PCW to complete the transfer from bed to standing, or standing to sitting. (See page 10 of the PCST instructions). The PCST justifies the need for assistance stating the Petitioner has a history of falling due to unsteadiness, right hip pain and dizziness.

In the January 2015 physical therapy evaluation, the Petitioner indicated that she has no difficulty lying down. (Exhibit 2, attachment 9) The April 2015 medical records again indicate no back pain, no muscle aches, no localized joint pain, no joint swelling, no joint stiffness, no gait unsteadiness and no coordination problems. As such, it contradicts the PCST and does not support the need for PCW assistance with transfers.

Medically Oriented Tasks

Under Medically Oriented Tasks (MOTs), the PCST indicated that the Petitioner needs assistance with medication reminders. However, the Petitioner's April 2015 medical records indicated that the Petitioner did not have any issues with her memory, specifically stating, "The patient is alert and oriented x 3. Speech is fluent...Comprehension, repetition and naming are normal. There is no recent or remote memory deficit. Fund of knowledge is normal." (Exhibit 3, pgs. 116-117)

Based upon the foregoing, it is found that DHS correctly denied PCW time for medication reminders.

In Summary

The Petitioner might need some supervision while completing her activities of daily living, due to a history of fainting, but the record is unclear regarding the cause for the fainting, when fainting last occurred and the frequency with which fainting occurs. More significantly, Petitioner's medical records do not support the need for PCW services at a level that is covered by Wisconsin's medical assistance program.

Petitioner should note that Diversity can, at any time, submit a new prior authorization request for PCW services, with current medical records to support its request.

CONCLUSIONS OF LAW

DHS correctly denied Diversity Home Health Services's request for prior authorization to provide Personal Care Worker services to the Petitioner.

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 Milwaukee,
Wisconsin, this 21st day of August, 2015.

\sMayumi M. Ishii
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 August 21, 2015.

Division of Health Care Access and Accountability