



FH

[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed July 10, 2015, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to deny Medical Assistance (MA) authorization for personal care worker (PCW) services, a hearing was held on August 18, 2015, by telephone.

The issue for determination is whether the DHCAA correctly denied PCW services based upon petitioner’s medical records.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Written submission of [REDACTED], Nurse Consultant

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who receives MA.
2. Petitioner received PCW services in the past. In late 2014 Midamerica Healthcare requested authorization for PCW services, but the DHCAA denied the request after reviewing petitioner’s medical records. In early 2014, Angel Homecare requested PCW services, but the DHCAA denied that request.
3. On April 24, 2015, Independence First requested authorization for 33.25 hours per week PCW services along with 7 hours per week travel time, PA no. [REDACTED]. After reviewing

[REDACTED]

petitioner's medical records again, the DHCAA again denied the request by a letter dated May 20, 2015.

4. The Independence First request noted petitioner's address as being on South Third Street in Milwaukee, and the DHCAA sent the denial notice to petitioner at that address. Petitioner did not receive the denial notice because she does not live at that address. It is unknown why Independence First noted the wrong address; the Personal Care screen was done at petitioner's current residence.
5. Petitioner has a seizure disorder that is generally controlled with medication. Recent medical appointments since January, 2015 note no particular concerns with seizures. There is no mention of reduced range of motion, dizziness, or inability to bend. Petitioner is not noted to use or need adaptive equipment in the home.

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.

The DHCAA now utilizes a Personal Care Screening Tool, a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The screening tool allots a specific amount of time in each area the recipient requires help, which the DHCAA's reviewer can then adjust to account for variables missing from the screening tool's calculations.

As a first point, MA rules require an appeal to be filed within 45 days of the negative notice. Wis. Stat., §49.45(5). However, it is a long-standing tenet that the person must receive the negative notice to invoke the time limit. In this case we have the unusual circumstance in which the MA provider put the wrong address on the prior authorization, and petitioner did not receive the notice. Although the error was made by petitioner's provider, and not the agency, I nevertheless will review the merits of the case because it is clear that petitioner appealed as soon as she was told about the denial.

[REDACTED]

As noted in the findings, despite the screening tool showing a need for 33 hours per week of hands on PCW care, petitioner's medical records show no particular deficits in movement or range of motion. It is noted that in both the PCW denials mentioned in finding of fact no. 2 the DHCAA suggested that petitioner obtain adaptive equipment to assist her, but apparently that has not occurred.

Most telling about the situation is that I asked petitioner's care giver, who appeared at the hearing, about the types of tasks she does with petitioner. Virtually the entire description was of supervising or monitoring petitioner. Notably she did not describe hands on assistance at all until I prompted the response by asking if she actually assisted with bathing, toileting, etc. There clearly is a concern that petitioner might have a seizure and might fall, but there is no basis for granting almost five hours per day of PCW services based upon the possibility that petitioner might have an accident. The PCW is not present 19 hours per day, and petitioner could have a seizure or accident at any time.

Petitioner presented some recent medical records, but the records show primarily that petitioner has mental health concerns. Again, the records show a concern for monitoring petitioner's activities of daily living, not necessarily assisting petitioner with the activities.

It was noted that petitioner received PCW services in the past. However, recently the Department has started to review PCW requests much more thoroughly than in the past, and the result is that some people who previously had services approved are now being denied. I cannot order services simply because petitioner received them in the past; each new prior authorization request must be reviewed on its own merits. To obtain services petitioner should get a complete medical report from a doctor specifying her impairments and deficits that will verify a need for *hands on* assistance with daily living activities.

CONCLUSIONS OF LAW

The DHCAA correctly denied authorization for PCW services because petitioner's medical record does not support the need for hands on assistance with daily living activities.

THEREFORE, it is **ORDERED**

That the petition for review 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 26th day of August, 2015

\sBrian C. Schneider
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 August 26, 2015.

Division of Health Care Access and Accountability