



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/167623

PRELIMINARY RECITALS

Pursuant to a petition filed July 30, 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 25, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly denied Advantage Home Health Care's request for prior authorization to provide PCW services to the Petitioner.

Note: The record was held open to allow the Petitioner's RN Administrator, Lakisha [REDACTED] to submit additional medical documentation. Ms. [REDACTED] submitted a fax that contained notes from a medical visit dated August 26, 2015, a letter from Dr R. [REDACTED] and copies of appointment cards for Petitioner's medical appointments for the last 12 months. The fax has been marked as Exhibit 5 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[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 (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On March 10, 2015, DHS sent to Family Care Services, Petitioner's prior PCW provider, a notice indicating that it modified a request for PCW services approving 7 hours per week for the period of December 28, 2014 through February 25, 2015. DHS further indicated:

“03/10/15: Member discontinued services with the agency”.

“02/10/15: Approved 28 units/wk PCW services after review for medical necessity for bathing/dressing d/t fatigue and weakness from dialysis. Requested documentation/clarifications not submitted for state for clinical review to support units requested.”

“01/07/15...Eating ‘C’ pertains to adaptive utensils, what does he use? ...What kind of DME does he use in the home? PCW cannot replace less expensive alternatives. Clinic notes do not support that he needs ADL assistances. Please submit supporting documents...”

(Exhibit 3, attachment 2)

3. On March 17, 2015, Advantage Home Health completed a Personal Care Screening Tool (PCST) for the Petitioner. It assessed the Petitioner's needs as follows:

Bathing – Level D
 Dressing – Level C
 Grooming – Level D
 Eating – Level C
 Mobility – Level A
 Toileting – Level B
 Transferring – Level D

(Exhibit 4)

4. On April 30, 2015, DHS sent Advantage Home Health Care a notice that it was denying a request for 13 hours per week of PCW services, stating:

The documentation does not support the medical necessity of PCW services at this time. Noted member does not have any DME. If requesting services in the future, submit PT eval which addresses DME needs, if any. A reminder that PCW services cannot be used to replace less expensive alternatives such as DME. If housekeeping assistance is needed, suggest contacting ADRC.

(Exhibit 4)

5. On May 11, 2015, Advantage Home Health Care submitted, on behalf of the Petitioner a prior authorization request for 52 units/13 hours per week of personal care services for 53 weeks at a cost of \$11,079.12 (Exhibit 4)
6. On May 12, 2015, Ms. [REDACTED] faxed to DHS a response to the April 20th denial, stating that the Petitioner has received a shower chair and that physical therapy is contraindicated by Petitioner's high blood pressure. Ms. [REDACTED] also submitted notes from doctor's appointments that were printed off on March 23, 2015. (Exhibit 4)

7. On June 1, 2015, DHS sent Advantage Home Health Care a notice that the request for services was denied. (Exhibit 4)
8. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 30, 2015. (Exhibit 1)
9. Petitioner is 56 years old and suffers from high blood pressure, cervical radiculopathy and lumbar radiculopathy. The Petitioner has renal failure and is on dialysis three times per week. (Exhibit 5; Testimony of Petitioner)
10. Petitioner lives alone. (Exhibit 4; Testimony of Petitioner)

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.

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, Advantage Home Health, completes a personal care screening tool (PCST). A link to the blank 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*.

In the case at hand, Advantage Home Health, on behalf of Petitioner, requested 52 units/13 hours per week of personal care services per week at a cost of \$11,079.12. DHS denied the request.

The letter from the Office of the Inspector General indicated that DHS denied the request, because the Petitioner’s medical documentation did not support the need for any PCW services at this time.

The PCST completed by Advantage Home Health indicates that the Petitioner needs assistance with his activities of daily living due to weakness, fatigue and chronic pain. (Exhibit 4)

Notes from a November 21, 2014, medical appointment noted that the Petitioner denied fatigue, weakness or malaise. It noted that the Petitioner denied muscle cramps, joint pain, joint swelling, the presence of joint fluid, back pain, stiffness, muscle weakness, arthritis, gout, loss of strength and muscle weakness. The notes further indicate that the Petitioner had normal posture, gait and strength. (Exhibit 3, attachment 5)

Notes from a December 26, 2014, medical appointment made the same observations. (Exhibit 3, attachment 6)

Notes from a January 9, 2015, medical appointment again indicated that the Petitioner denied fatigue, weakness and malaise; that he denied muscle cramps, joint pain, joint swelling, presence of joint fluid, back pain, stiffness, muscle weakness, arthritis, gout, loss of strength and muscle aches. It again indicated that Petitioner's strength was normal. (Exhibit 3, attachment 7)

Based upon the foregoing, it was reasonable for DHS to conclude the request for PCW services was unsupported by Petitioner's medical records.

Ms. [REDACTED] opined that the Petitioner goes to the doctor when he is feeling well enough to go, so it is not surprising that on those particular days, the Petitioner was having good day and did not complain of any issues. While this is possible, nothing in the medical records provided for this hearing indicate the Petitioner's "bad" days require PCW assistance.

Ms. [REDACTED] supplemented the record with notes from an August 26, 2015, medical appointment. However, those notes also indicate that the Petitioner denies fatigue, weakness and malaise. The notes do indicate that on that day, the Petitioner complained of muscle cramps, joint pain, back pain and stiffness, but the notes indicate that the pain was mild. The notes also indicate that the Petitioner's strength was normal. (Exhibit 5)

Petitioner's medical records contradict the claim that the Petitioner is too fatigued or weak to complete his ADLs. Though the Petitioner might have chronic pain, his medical records do not support the conclusion that he is in too much pain to complete his activities of daily living.

Based upon the foregoing, it is found that DHS correctly denied Advantage Home Health's request to provide PCW services for the Petitioner.

It should be noted that Petitioner's physician recommended, in her August 25, 2015 letter and in the August 26, 2015 medical notes, that an *evaluation* for PCW services be performed. She does not indicate that an evaluation is contraindicated by any of Petitioner's conditions. The Department of Health Services has also recommended that the Petitioner have a PT/OT evaluation to determine what Petitioner's limitations are and what pieces of Durable Medical Equipment might be helpful to Petitioner.

Petitioner and Advantage Home Health can, at any time, submit a new prior authorization request for services, if Petitioner has such an evaluation and they obtain the medical documentation to support the request for services.

I note to the Petitioner that his provider, Advantage Home Health will not receive a copy of this Decision. So, if Petitioner would like Advantage Home Health to render further assistance to him, he will have to share this decision with them.

CONCLUSIONS OF LAW

DHS correctly denied Advantage Home Health Care’s request for prior authorization to provide PCW 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 12th day of October, 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 October 12, 2015.

Division of Health Care Access and Accountability