



FH

[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/168022

PRELIMINARY RECITALS

Pursuant to a petition filed August 14, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General (OIG) in regard to Medical Assistance, a telephonic hearing was held on September 23, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly denied the petitioner’s June, 2015 prior authorization (PA) request for personal care worker (PCW) services due to petitioner not establishing the medical necessity of PCW services.

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: [REDACTED], RN consultant
Office of the Inspector General (OIG)
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 36 year old male resident of Milwaukee County who is certified as eligible for MA. The petitioner resides with his fiancé, [REDACTED]. Petitioner does not regularly attend scheduled activities outside of his residence.

2. Petitioner's fiancé is his "primary caretaker."
3. The petitioner's primary diagnoses are leg pain and obesity. He has a history of congestive heart failure, but does not exhibit any swelling in his extremities and has regular pulses. He is able to communicate his needs verbally. He does not have any hearing or visual impairments. He is capable of being left alone during the day.
4. The petitioner's February 19, 2015 [REDACTED] office visit note indicates petitioner "denies any chest pain, shortness of breath or dyspnea on exertion, no palpitations, presyncope or syncope (temporary fainting due to a fall in blood pressure), no decreased range of motion symptoms, denies any numbness, no weakness, no dizziness." Exhibit 1, Attachment 8.
5. The petitioner does not use any assistive device for ambulation, and ambulated safely in clinic with a steady gait, as documented by occupational therapist (OT). Exhibit 1, Attachment 9.
6. OT [REDACTED] indicated in his March 25, 2015 assessment of the petitioner after his home visit in pertinent part: "Pt's functional mobility in home was not consistent with pt's reported self-care status on initial evaluation. Recommend further verification of fiance's duties prior to approving PCW assist in home. Pt's functional mobility during home visit appears consistent with pt being able to perform more homemaking tasks than what the pt's stated abilities were on day one of evaluation. **Recommend caution prior to approval of PCW hours pending further investigation of inconsistencies noted in this report.**" (Emphasis added). See Exhibit 1, page 5, and Exhibit 1, Attachment 9.
7. The petitioner has not established with any medical documentation that he has any significant deficits which physically interfere with her ability to complete his ADLs other than general chronic pain. Petitioner has basically normal range of motion and normal extremities.
8. On or about April 17, 2015, [REDACTED] completed petitioner's Personal Care Screening Tool (PCST) which alleged that petitioner needed 11.75 hours of PCW services per week.
9. On or about June 3, 2015, the petitioner's fee-for-service provider, [REDACTED] LLC, requested prior authorization (PA) for MA coverage of personal care worker (PCW) 11.75 hours per week for 53 weeks at a total requested cost of \$12,455.00. See Exhibit 2.
10. The petitioner has not requested any additional Durable Medical Equipment (DME) which could be used as an assistive device instead of a PCW to help perform ADLS such as a long handled scrub brush, long handled shoe horns, dressing sticks and sock/stocking aids.
11. OIG sent a June 30, 2015 notice to the petitioner denying his PA request for PCW services due to the petitioner's PA request and reliable medical evidence did not support the medical necessity of personal care worker (PCW) services for the petitioner.
12. In her September 3, 2015 denial summary, OIG nurse consultant [REDACTED] provided the following statement regarding why the petitioner's PA request was denied:

This consultant reviewed the Appeal Request packet. There was no additional documentation to support the medical necessity of PCW services. It appears that [REDACTED] is primarily seeking someone to assist him with house cleaning. This is not the purpose of the PCW program under WI Medicaid. [REDACTED] writes that he needs assistance with adjusting the temperature of his bath water. This consultant wishes to suggest that his fiancé assist him with this task or that he purchase a bath thermometer which can be purchased without a prescription.

This PA was denied as the documentation from multiple sources does not support the medical necessity of PCW services. It appears that [REDACTED] already

has informal supports in place to assist him if necessary. In addition, the OIG wishes to point out that the WI Medicaid PCW program is not designed to be a form of income for members' family and friends.

DISCUSSION

The Office of the Inspector General (OIG) may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat. §§ 49.46(2) and 49.47(6)(a), as implemented by Wis. Admin. Code Ch. DHS 107. Some services and equipment are covered if a prior authorization request is submitted and approved by the Division in advance of receiving the service. Finally, some services and equipment are never covered by the MA program.

In the case of PCW services, MA pays only for medically-oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his place of residence in the community. Wis. Admin. Code § DHS 107.112(1)(a). **Covered PCW services include only 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(1)(b).

Further, PCW services must be provided according to a written plan of care that is based on an evaluation made by an RN who has visited the recipient's home. Wis. Admin. Code §§ DHS 107.112(1)(a) & (3)(b).

During the September 23, 2015 hearing, the petitioner was unable to provide any reliable medical testimony or evidence to refute the reasons for OIG's denial of his PA request, as stated in Exhibit 1 (Ms. ██████████'s detailed summary letter with 10 Attachments). The petitioner alleged in vague terms various explanations for why he believed that he needed PCW services, but was unable to establish any medical need for such PCW services. He alleged neuropathy, but was unable to provide any reliable evidence of such neuropathy. He was also misleading in alleging that his OT was a physician, but that provider was an OT. Petitioner provided no persuasive evidence that his medical problems justified the approval of the requested 11.75 hours per week of PCW services. Furthermore, the petitioner was unable to present any reliable, persuasive testimony or evidence to establish that he required PCW services for any of the above 13 covered PCW activities.

The petitioner was unable to refute the convincing arguments in the Department's September 3, 2015 summary or the 10 Attachments to Exhibit 1. See especially Findings of Fact #4, #6 and #12 above. Petitioner was unable to establish with any reliable evidence that he has any covered PCW needs that are

not being met. Accordingly, based upon review of the entire hearing record, I conclude that the Department correctly denied the petitioner's June, 2015 prior authorization (PA) request for personal care worker (PCW) services due to petitioner not establishing the medical necessity of PCW services.

CONCLUSIONS OF LAW

The Department correctly denied the petitioner's June, 2015 prior authorization (PA) request for personal care worker (PCW) services due to petitioner not establishing the medical necessity of PCW services.

THEREFORE, it is **ORDERED**

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 November, 2015

\sGary M. Wolkstein
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 November 12, 2015.

Division of Health Care Access and Accountability