



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/169641

PRELIMINARY RECITALS

Pursuant to a petition filed October 24, 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 December 01, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly modified the Petitioner’s request for skilled nursing services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] |
[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 September 4, 2015, [REDACTED] [REDACTED] [REDACTED] [REDACTED] ([REDACTED]), submitted on behalf of Petitioner, a prior authorization request, seeking 11 skilled nursing visits, once a week for nine weeks, with two additional visits to be used as needed, at a cost of \$1,903.00. (Exhibit 4, pgs. 7 and 12)
3. The request for services was for the nurse to provide:
4. Observation and assessment related to diagnosis, medications, and vitals with every visit, including a pulse-ox as needed, and to call with a pulse-ox less than 92%.
5. To assess/teach the patient/caregiver G-Tube cares and maintenance, flushing G-Tube, hydration/nutritional assessment, GI-GU assessment, med administration, if applicable, trouble shooting pump problems/alarms, and tolerance to feeds.
6. Encourage patient to be in upright position for feedings
7. Teach patient's mother how to straight cath patient using sterile technique. Straight caths to be done rarely and only when patient has not urinated for a number of days, per order from MD.
8. (Exhibit 4, pgs. 12 & 14)
9. The order for services also allows the nurse to administer tube feedings and to perform "clean technique daily G-tube cares", but the order indicates that these tasks may also be done by the Petitioner's caregiver. (Exhibit 4, pg. 14)
10. Petitioner is 36 years old, is non-verbal, with diagnoses of epilepsy, cerebral palsy, Myelodysplastic Syndrome, quadriplegia, altered mental status (intellectual disability), neuromuscular scoliosis, anemia, spasticity and neuropathy. (Exhibit 2, pgs. 24, 25, 26, 27)
11. Petitioner receives 63 hours per week of personal care services. (Exhibit 3, pg. 4; Testimony of Petitioner's mother)
12. On September 23, 2015, the Department of Health Services (DHS) sent the Petitioner and [REDACTED] notices advising them that the request for services was modified and that it approved five visits for the eight week period of September 6, 2015 through November 4, 2015. (Exhibit 4, pgs. 30-35)
13. The Petitioner's mother, on her behalf, filed an appeal that was received by the Division of Hearings and Appeals on October 24, 2015. (Exhibit 1)
14. [REDACTED] completed a second Home Health Certification and Plan of Care, dated November 5, 2015, with the same instructions for the nurse as the September 2015 plan of care. (Exhibit 2, pgs. 18-20)
15. Both the September 2015 and November 2015 plans of care indicated that the Petitioner has been able to stay out of the hospital, has done well eating two jars of baby food and has progress to soft food. (Exhibit 2)
16. Petitioner has not been hospitalized since September of 2014, when she was treated for aspiration pneumonia. She has not been in distress and has continued to be stable. (Testimony of Petitioner's mother)

DISCUSSION

Home Health Services are a covered service by Medicaid. Wis. Admin. Code DHS §107.11 Skilled Nursing Services are included under the umbrella of Home Health Services:

- (a) Skilled nursing services provided in a recipient's home under a plan of care which requires less than 8 hours of skilled nursing care per calendar day and specifies a level of care which the nurse is qualified to provide. These are:
1. Nursing services performed by a registered nurse, or by a licensed practical nurse under the supervision of a registered nurse, according to the written plan of care and accepted standards of medical and nursing practice, in accordance with ch. [N 6](#);
 2. Services which, due to the recipient's medical condition, may be only safely and effectively provided by an RN or LPN;
 3. Assessments performed only by a registered nurse; and
 4. Teaching and training of the recipient, the recipient's family or other caregivers requiring the skills on an RN or LPN.

Wis. Admin. Code DHS §107.11(2)(a)

“Skilled Nursing Services” are further defined in Wis. Admin. Code §DHS101.03(163):

“Skilled nursing services” means those professional nursing services furnished pursuant to a physician’s orders which require the skills of a registered nurse or licensed practical nurse and which are provided either directly by or under the supervision of the registered nurse or licensed practical nurse.

Note: Examples of services which would qualify as skilled nursing services are:

- (a) Intravenous, intramuscular, or subcutaneous injections and hypodermoclysis or intravenous feeding;
- (b) Levin tube and gastrostomy feedings;
- (c) Nasopharyngeal and tracheotomy aspiration;
- (d) Insertion and sterile irrigation and replacement of catheters;
- (e) Application of dressings involving prescription medications and aseptic techniques;
- (f) Treatment of extensive decubitus ulcers or other widespread skin disorder;
- (g) Heat treatments which have been specifically ordered by a physician as part of active treatment and which require observation by nurses to adequately evaluate the patient’s progress;
- (h) Initial phases of a regimen involving administration of medical gases; and
- (i) Rehabilitation nursing procedures, including the related teachings and adaptive aspects of nursing that are part of active treatment, e.g., the institution and supervision of bowel and bladder training programs.

Emphasis added

Prior authorization is required to review utilization of services and to assess the medical necessity of continuing services, when home health services are asked to be extended, as is the case here. See Wis. Admin. Code DHS §107.11(3)(e)

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)

As with most public assistance benefits the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage falls on the applicant, *Gonwa v. Department of Health and Family Services*, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003). In other words, it

is a Petitioner's burden to demonstrate that s/he qualified for the requested continued services by a preponderance of the evidence. It is not the Department's burden to prove that s/he is not eligible.

It should be noted that, "a member's condition may be such that a service that would ordinarily be considered unskilled may be considered a skilled nursing service, because the service can only be safely and effectively provided by a nurse." *Topic #2150 of the On-Line Provider Handbook*

Under the Plan of Care, the tasks for which skilled nursing services are solely responsible for are:

- a. Observation and assessment related to diagnosis, medications, and vitals with every visit, including a pulse-ox as needed, and to call with a pulse-ox less than 92%.
- b. To assess/teach the patient/caregiver G-Tube cares and maintenance, flushing G-Tube, hydration/nutritional assessment, GI-GU assessment, med administration, if applicable, trouble shooting pump problems/alarms, and tolerance to feeds.
- c. Encourage patient to be in upright position for feedings
- d. Teach patient's mother how to straight catheterize patient using sterile technique. Straight catheters to be done rarely and only when patient has not urinated for a number of days, per order from MD.

Assessments do not fall under the legal definition of skill nursing services, cited above. Thus, the only nursing tasks listed in the plan of care that medical assistance will cover are teaching Petitioner's caregiver how to administer G-tube feedings, how to take care of the G-tube, how to assess Petitioner's needs related to the G-Tube and how to straight catheterize the Petitioner, if she needs it.

Given the limits on what skilled nursing tasks can be covered, given that Petitioner is also receiving 63 hours of PCW services per week, and given that Petitioner has, in fact, been stable and improving her ability to feed, DHS correctly modified the request to five visits in an eight week period.

If Petitioner's condition changes or requires additional services, her provider can always submit another prior authorization request for those services.

CONCLUSIONS OF LAW

(DHS) correctly modified the Petitioner's request for skilled nursing services.

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 16th day of December, 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 December 16, 2015.

Division of Health Care Access and Accountability