



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/169818

PRELIMINARY RECITALS

Pursuant to a petition filed October 28, 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 02, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly denied the petitioner's prior authorization request for Personal Care Worker (PCW) hours.

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

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Milwaukee County.
2. On June 11, 2015 the petitioner's provider completed a Personal Care Screening Tool (PCST).

3. On September 11, 2015 the petitioner's provider submitted a prior authorization request for Personal Care Worker (PCW) hours based upon the aforementioned PCST. Specifically, the petitioner's provider requested 33 hours of PCW time per week for 53 weeks. The provider also requested 24 hours per year of Pro Re Nata time. This was at a cost of \$35,460.00.
4. On September 30, 2015 the Department sent the petitioner a notice stating that they denied the petitioner's request for PCW hours.
5. The petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 2, 2015.
6. The petitioner lives with family.
7. The petitioner has diagnoses of pain in joint involving upper arm, neck pain, and cervical disc disease. She was in a car accident in 2011. She also has Vitamin D deficiency, hyperlipidemia, muscle spasm, lower back pain and hypothyroidism. She had a birth control device, which was implanted in her arm in Thailand surgically removed in Thailand. This likely caused superficial nerve and lymphatic damage. She is 57 years old.

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)

The petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

The petitioner’s provider requested 33 hours per week of PCW time plus 24 hours per year of Pro Re Nata time. The Department denied this request. There have been previous requests in the past for PCW time, which the Department has also denied. At the hearing petitioner requested the same amount of time that the provider had requested and that the Department had denied.

In determining how many hours of personal care services an individual is allowed, a service provider completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located on the Forward Health website: <https://www.forwardhealth.wi.gov/WIPortal>, under topic number 3165. 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*; this chart can also be found at the aforementioned website.

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), such as glucometer readings or medication assistance, are also examined.

The petitioner has diagnoses of pain in joint involving upper arm, neck pain, and cervical disc disease. She was in a car accident in 2011. She also has Vitamin D deficiency, hyperlipidemia, muscle spasm, lower back pain and hypothyroidism. She had a birth control device, which was implanted in her arm in Thailand surgically removed in Thailand. This likely caused superficial nerve and lymphatic damage. She is 57 years old.

It is the petitioner's burden to establish the necessity of the requested time. At the time of hearing, the petitioner did not offer testimony of the caregiver's to explain why the Department's calculation of need under the PCST was flawed. The petitioner did not articulate what quantity of additional time is needed for each task or what specific behaviors justify more time. Nothing was quantified. The Department's analysis of petitioner's needs is the most thorough and credible determination in the record. The petitioner received a copy of the nurse consultant's letter prior to the hearing, yet petitioner offered no specific rebuttal to any of the points or time calculations offered by the Department. The petitioner must offer some specificity and evidence to support the requested time. Without a better way to quantify the time for services, I have no basis upon which to find in favor of the petitioner's request for PCW hours.

I specifically note that the PCST has little to no explanation. The PCST should describe the type of physical assistance that the petitioner needs in the various areas. In this case the explanations given are either too vague or not helpful for the petitioner. For example, with respect to mobility the screener writes that the petitioner "needs help with making sure walk way areas are cleared of rugs and objects." I see no reason why walk ways would not already be clear. If the rugs are an issue, then the rugs should be removed. I note that the petitioner appeared in person for the hearing. She used a cane, and had some difficulty sitting and standing. It is possible that mobility is an issue for the petitioner. However, the PCST does not sufficiently describe her limitations. She carries the burden in this case. The Department is also correct that the petitioner could benefit from some additional durable medical equipment. Perhaps she should be using a walker and not a cane. I further note that the medical records do not support the limited information provided on the PCST. Given the petitioner's diagnosis, medications, and observations in the medical records, I see no reason that she would need a PCW for 33 hours per week.

The petitioner should be aware that if the provider can show a medical need for PCW time, it can always request a new prior authorization. It would be helpful if the new prior authorization had additional documentation and explanation consistent with the petitioner's clinic / treatment records from her doctor. Although it is not required, the doctor could write a letter outlining the petitioner's specific functional limitations with respect to specific ADLs and IADLs. Based upon the evidence before me I must conclude that the Department's denial was correct.

The petitioner should contact the ADRC for Milwaukee County. It is possible that she could qualify for the family care program. This program could give additional assistance for Supportive home care, which Medicaid card service is unable to provide.

CONCLUSIONS OF LAW

The Department correctly denied the petitioner's prior authorization request for Personal Care Worker (PCW) hours.

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 22nd day of December, 2015

\sCorinne Balter
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 22, 2015.

Division of Health Care Access and Accountability