



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]

DECISION

MPA/173213

PRELIMINARY RECITALS

Pursuant to a petition filed March 24, 2016, 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 regards to the modification of a Prior Authorization Request for personal care worker services to be reimbursed by Medical Assistance, a telephone hearing was held on April 28, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly modified approved personal care worker (PCW) service hours from the requested 24.25 per week to 7 hours per week.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]

Respondent:

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

Written Appearance By: [Redacted], R.N., Nurse Consultant
Office of Inspector General
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 63 year-old resident of Milwaukee County. She lives alone. She is 5'6" tall, and weighs 220 lbs. She has generalized arthropathy, generalized weakness, generalized malaise, diabetes mellitus type II-insulin dependent, and hypertension. She is medication and insulin compliant. She takes aspirin, metformin, insulin, Prozac, spironolactone, losertan, levothyroxine and glipizide. She reports having two seizures in 2014, but these seizures are etiology unknown.

She reports bi-polar disorder, but this is not reflected in clinical documentation submitted. See, Exhibit #1, attachments 10 & 11; and see, Exhibit 2, attached HOME HEALTH CERTIFICATION AND PLAN OF TREATMENT, dated 12/11/15).

2. On January 15, 2016, the petitioner's home health agency, Metro Home Health Services of Milwaukee, Wisconsin, submitted a Prior Authorization Request (PA/R) to the Department requesting approval of reimbursement for 24.25 hours of personal care worker (PCW) services per week, or 3.46 hours per day, plus 14 units of travel time per week, and 4 skilled RN visits as needed. The requested start date was 2/29/16. The Personal Care Screening Tool submitted in support of this request also indicated she needed 97 units, or 24.25 hours, per week of PCW services. See, Exhibit #1, attachment 1.
3. On February 11, 2016, the petitioner's physician signed an order approving one hour per day of PCW services, 7 days per week. The order was designated, however, for the period of December 9, 2015 to February 6, 2016, and preceded the period for which prior authorization was sought. See, Exhibit No. 1, attachment 2.
4. A supplemental physician's order dated January 12, 2016, but with no end date indicated that the petitioner required PCW services for 3.75 hours in the AM, 4 days per week, plus 3 hours in the AM, 2 days per week, plus, 3.25 hours in the AM, 1 day per week, or 24.25 PCW hours per week. This order was not dated or signed by the physician, nor were there delegated tasks listed for the PCW to perform. See, Exhibit No. 1, attachment 3.
5. The Department requested additional information from the provider thereafter, and the provider submitted a new Prior Authorization Request Form (PA/RF) on February 16, 2016, requesting 69 units per week (17.25 hours per week), with a certification date for the Plan of Care of February 7 – April 6, 2016, as signed on February 4, 2016. However, the Plan of Care Order still indicated that the petitioner needed 1 hour per day of PCW services, 7 days per week. See, Exhibit #1, attachments 4, 5 & 6.
6. A second supplemental order dated February 11, 2016, was submitted indicating that it clarified the January 11/12 order with the amounts changed to 3 hours in the AM, 3 days per week; plus 2 hours in the AM, 2 days per week; and 2.25 hours per day, 1 day, for a total of 61 units (15.25 hours per week). This order was signed February 15, 2016, but the physician's signature was not identified in the printing, and the physician name was unknown. See, Exhibit #1, attachment 7.
7. After review of the forgoing outlined in Finding of Facts Nos. 2-6, and the clinical documentation submitted with the PA/RF, on February 29, 2016, the Department modified the authorization and approved 7 units per week, or 1 hour per day, of PCW services. See, Exhibits #1 & #2.
8. On March 24, 2016, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the modification action.
9. The petitioner asserts that she has bilateral arthritis in her knees that is painful and limits her ability to walk and stand; soils the bed 4-5 times per week; is diabetic and needs reminders from a PCW; needs a PCW to go downstairs to do her laundry, clean her house, grocery shop, iron, help her dress, bathe and shower, and fix her light meals. See, Exhibit #3.

DISCUSSION

The Department of Health Services, by the Office of Inspector General, 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 DHCAA in advance of receiving the service. Finally, some services and equipment are never covered by the MA program. The requested Personal Care Worker (PCW) in this case is not covered at the level requested, by the MA program, per

Wis. Admin. Code § DHS 107.02(3)(e) because the level requested originally was determined by the Division's Nurse Consultant to be "not medically necessary" as that term is defined by the MA Program rules. The Division of Health Care Access and Accountability was therefore unable to approve the requested service.

I have reviewed the testimony and the clinical record, as well as the Department's guidelines. I am satisfied that the PA/R requested by the petitioner and her provider was far in excess of the amount of cares she has demonstrated is medically necessary. The clinical documentation indicates that the petitioner possesses a very significant degree of functional skills far greater than she describes in her oral testimony. The clinical evidence does not support a conclusion that she is bi-polar or that this causes her to require additional cares. See, Exhibit #1, attachments 10 & 11. The clinical evidence does not demonstrate a medically diagnosed condition of seizures. There is no explanation why the petitioner does not use adult diapers if she is soiling her bed 3-5 times per week as she testified. In addition, housekeeping activities are limited, for a person living alone, to 1/3 of the PCW service time. Frankly, the majority of the PCW services requested here seems to be primarily housekeeping services. And I also find that the petitioner has engaged in "puffery", i.e., to a large extent her testimony as to the extent of her limitations far exceeds the limitations demonstrated by medical documentation. And Findings of Fact Nos. 2 - 6 clearly indicate that the provider's requests and modifications represented not mere adjustments, but a jumble of internally inconsistent and poorly documented statements about what her PCW service needs were in the request period. This was sloppy documentation, at best.

However, this is not to say that she does not require some assistance with her cares. The appropriate question is how much assistance she requires. I conclude that the preponderance of the evidence in this record supports the Department's determination that 7 hours per week of PCW services is sufficient to meet her documented medical care needs.

Nothing in this determination prevents the petitioner and her provider from filing a new Prior Authorization Request Form at any time seeking more PCW service hours and better documenting her request and her medical need for a higher service level. This record is a jumble of multiple modifications, poor documentation, and a medical examination that makes it crystal clear that she retains significant functional skills. Indeed, the medical exams attached support the Department's determination that she can perform significant cares far, far more than they support the petitioner's claim that she needs nearly 4 hours per day of assistance. As a side note to the petitioner, and her provider, in the near future the Department will implement a PCW approval process that will require a designated agent of the Department to perform the Personal Care Screening Tool assessments for all persons requesting PCW coverage. This process is to ensure uniform application of professional standards of care and ensure that tax dollars are allocated only to medically necessary care within DHS policies and guidelines.

The petitioner's appeal is dismissed.

CONCLUSIONS OF LAW

That the Department has correctly modified the petitioner's Prior Authorization request and approved 7 hours per week of Personal Care Worker services based upon this record and clinical documentation.

THEREFORE, it is

ORDERED

That the petition for review herein be, and the same hereby 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.

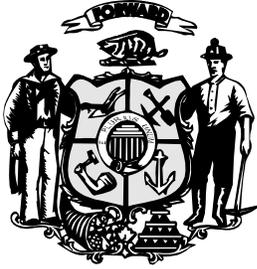
APPEAL TO COURT

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 Madison,
Wisconsin, this 5th day of May, 2016

\sKenneth D. Duren, Assistant Administrator
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 May 5, 2016.

Division of Health Care Access and Accountability