



FH
[REDACTED]

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

In the Matter of:

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

DECISION

MPA/173739

PRELIMINARY RECITALS

Pursuant to a petition filed April 14, 2016, 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 [“MA”], a Hearing was held via telephone from Madison, Wisconsin on May 10, 2016.

The issue for determination is whether OIG was correct to modify Prior Authorization [“PA”] # [REDACTED] by approving 6.5 hours per week of Personal Care Worker [“PCW”] time for petitioner instead of the 17.5 hours per week that was requested.

There appeared at that time via telephone following persons:

PARTIES IN INTEREST:

Petitioner:

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

Represented by:

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

Respondent:

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

BY: [REDACTED], RN, BSN, Nurse Consultant
Office of the Inspector General
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 47 years old) is a resident of Milwaukee County, Wisconsin.
2. Petitioner has a diagnosis of schizophrenia; he lives with his mother.
3. On January 18, 2016 petitioner's provider, Nurturing Concepts, LLC of Milwaukee, Wisconsin, filed *Prior Authorization Request Form (PA/RF)* # [REDACTED] dated January 18, 2016 with OIG requesting 70 units (17.5 hours) per week of PCW services and 21 units (5.25 hours) per week of PCW travel time all for 53 weeks with a start date of February 23, 2016 at a total cost of \$24,857.00.
5. OIG modified PA # [REDACTED] by approving 6.5 hours per week of PCW time for petitioner instead of the 17.5 hours per week that was requested; OIG also approved the 5.25 hours per week of PCW travel time that was requested; OIG sent a letter to petitioner dated March 28, 2016 and entitled *BadgerCare Plus Notice of Appeal Rights* informing petitioner of the modification.
6. Four (4) different and inconsistent *Personal Care Screening Tool* ["PCST"] forms were completed on December 31, 2015 by a Registered Nurse ["RN"] showing that petitioner required differing levels of assistance; some allocated 70 units (17.5 hours) per week of Activities of Daily Living ["ADL"] assistance for petitioner and some allocated 35 units (8.75 hours) per week of ADL assistance for petitioner.
7. A *Long Term Care Functional Screen Report* ["LTC FS"] for petitioner completed in June 2015 states that he needs prompts to bath/shower (to ensure completion/regulate water temperature) and requires assistance with shaving but is otherwise generally independent.
8. Based on a detailed assessment using the 4 PCSTs, the LTC FS, petitioner's medical records, an April 13, 2016 letter from petitioner's Advanced Psychiatric Nurse Practitioner, and the *Personal Care Activity Time Allocation Table* ["PCATAC"] OIG allotted 26 units (6.5 hours) per week of PCW time for petitioner.

DISCUSSION

By law, MA pays only for medically necessary and appropriate health care services when provided to currently eligible MA recipients. Wis. Admin. Code § DHS 107.01(1) (August 2015); See also, Wis. Stat. §§ 49.46(2) & 49.47(6) (2013-14). 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 or her place of residence in the community. Wis. Admin. Code § DHS 107.112(1)(a) (August 2015). Further, some medically oriented tasks may be covered as PCW services if the PCW has received special training in performing the task. Wis. Admin. Code §§ DHS 107.112(2)(b) & 107.11(2)(b)1. (August 2015). PCW services must be performed according to a written plan of care developed by an RN. The plan must be based on the RN's visit to the recipient's home and must be reviewed by the RN at least every 60 days via a home visit. Wis. Admin. Code §§ DHS 107.112(3)(b) & (c) (August 2015).

In addition to the medically oriented tasks allowed for PCW's that have received special training, the only PCW services covered are 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) & (4)(f) (August 2015).

As with any eligibility denial, the burden is on petitioner to show that he is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to do so.

OIG based its determination to grant 6.5 hours per week on its evaluation using the 4 PCSTs, the LTC FS, petitioner's medical records, an April 13, 2016 letter from petitioner's Advanced Psychiatric Nurse Practitioner, and the PCATAC. OIG's determination is reasonable and well supported. Petitioner has presented little, if anything, to show otherwise. It is particularly troubling that the 4 PCSTs are different and inconsistent. In the absence of additional evidence OIG's determination must be affirmed.

CONCLUSIONS OF LAW

For the reasons explained above, OIG was correct to modify PA # [REDACTED] by approving 6.5 hours per week of PCW time for petitioner instead of the 17.5 hours per week that was requested.

NOW, THEREFORE, it is

ORDERED

That 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 2nd day of June, 2016

\sSean P. Maloney
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 June 2, 2016.

Division of Health Care Access and Accountability