



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MPA - 175295

PRELIMINARY RECITALS

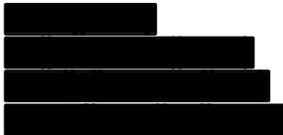
Pursuant to a petition filed on June 28, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability regarding Medical Assistance (MA), a hearing was held on August 17, 2016, by telephone.

The issue for determination is whether the department correctly modified the PA # [redacted] reducing the hours from 38.5 hours as requested to 15.25 approved hours.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [redacted], RN (in writing)
Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.

2. On 4/22/16, Independence First (the provider) filed a request for prior authorization for personal care worker ("PCW") services in the amount of 38.5 hours per week.
3. The Department reviewed the PA request and modified it to approve 15.25 hours per week.
4. Petitioner appealed the modification.

DISCUSSION

MA coverage of PCW services is described in the Wis. Adm. Code, §DHS 107.112. Covered services are specified in subsection (1), and are defined generally 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." Examples of covered services are assistance with bathing, with getting in and out of bed, with mobility and ambulating, with dressing and undressing, and meal preparation. The Code also provides that, "No more than one-third of the time spent by a personal care worker may be in performing housekeeping activities." Wis. Adm. Code, § DHS 107.112(3)(e).

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).

In this case, petitioner was represented at hearing by his mother, [REDACTED]. At a hearing requesting a prior authorization, it is the burden of petitioner or the provider to establish the medical necessity of the requested services.

Petitioner's mother testified vaguely that petitioner requires more time for dressing and other activities based on what kind of a day he is having. She described some days as more difficult to get him to wear appropriate clothing and to get him to apply the right lotion to his skin in the morning. Ms. [REDACTED] explained that petitioner is on medication and sees a psychiatrist but still has tantrums and outbursts because he does not want to do what his mother wants him to do. She explained that it can take her a long time to provide cares. She simply stated that he needs more time than what has been granted and that the time needed varies.

Petitioner's brother [REDACTED] [REDACTED] also testified that it is a challenge to dress petitioner as he does not want to wear seasonally appropriate clothing. He also described petitioner being difficult regarding dressing and often "going back and forth and debating and trying to get him to understand that you need to dress appropriately." Petitioner's brother also described that petitioner requires help with eating because he has "had a couple incidents of choking over the years." For this reason, his caregivers ensure that his food is portions properly and that he chews his food fully.

The Department reviewed medical records, and a long-term care functional screen. The Department did not allow for time for eating because the last documented incident of choking was in 2014. The Department notes that this incident does not rise to the level of an ongoing risk. I agree. The type of attention described by petitioner's brother is not justified based on the documentation in the record.

Petitioner's brother stressed that exercise is essential to overall health. He found it mind-boggling that time for exercise was not allowed it is a proven fact that if you work out it is beneficial to a person physically and psychologically. He explained that petitioner is a very active person and that continued exercise will prevent illness and injury and should be allowed for anyone. But, this is a request for petitioner and must be based on medical need. That something may benefit a person is not the criterion.

Based on the various arguments and the testimony, the PA modification by the Department is not error. In this case, the caregivers are immediate relatives of petitioner. The problem with family members being the personal care workers is that it is that they may take more time to do care tasks due to inexperience or carelessness. It may indeed be that another caregiver could get the tasks done in the allotted time without as much difficulty.

I also have to question the motivation of both petitioner's mother and brother as they are essentially arguing for their household income. Independent evidence would have been far more persuasive. The argument by the Department here is that the requested time was not established as medically necessary. It would have helped petitioner to have presented an independent assessment by the separate agency or even by a professional nurse or caregiver with established qualifications. It is the burden of petitioner to prove the need for the requested hours. Without credible and persuasive evidence, he was unable to rebut the position of the Department's consultant.

CONCLUSIONS OF LAW

The modification of the PA was correct.

THEREFORE, it is

ORDERED

That this appeal 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, **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 14th day of September, 2016

\s _____
John P. Tedesco
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 September 14, 2016.

Division of Health Care Access and Accountability