



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: HMO - 175611

PRELIMINARY RECITALS

Pursuant to a petition filed on July 15, 2016, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the iCare regarding Medical Assistance (MA), a hearing was held on September 6, 2016, by telephone from Madison, Wisconsin.

The issue for determination is whether the respondent correctly denied petitioner’s personal care worker (PCW) services.

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:

iCare
1555 N. Rivercenter Drive
Suite 206
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Milwaukee County.

2. The respondent is a Wisconsin licensed health maintenance organization that contracts with the Wisconsin Department of Health Services to provide and pay for Medicaid benefits for SSI disabled individuals who enroll in the respondent's Medicaid plan. Petitioner enrolled in the respondent's Medicaid program on August 1, 2011.
3. Petitioner has diagnoses of arthritis, diabetes and lower back pain. She has previously undergone treatment for cancer. Petitioner has a seated walker, cane, shower chair, toilet riser, grab bars in the shower and a life line assist device.
4. Petitioner had previously been approved for an average of 2.75 hours of PCW services daily, and was receiving this level of care since August of 2014. At that time, petitioner was still recovering from breast cancer surgery and the side effects of radiation and chemotherapy treatment. Petitioner's daughter is her caregiver.
5. On May 25, 2016, Milwaukee Center for Independence Home Care, requested authorization for additional PCW time, which would increase her PCW time to 3.5 hours for 6 days each week and 3.25 hours one day per week. Following completion of an independent in-home assessment performed by Horizon Home Health, the respondent denied the PA request in its entirety, including petitioner's ongoing PCW hours, after determining that the services were not medically necessary. Petitioner was notified of the denial in writing on June 29, 2016.
6. Petitioner is independent in her activities of daily living.

DISCUSSION

Personal care services are "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). Covered services include 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(b).

Personal care workers can spend no more than one-third of their time performing housekeeping activities. Like all medical assistance services, PCW services must be medically necessary and cost effective. Wis. Admin. Code, §DHS 107.02(3)(e)1 and 3. At hearing on the issue of denial of a PA request, it is the burden of petitioner or the provider to establish the need and appropriateness of the requested services. Petitioner has done neither based on this record.

The respondent has historically approved PCW services for the petitioner. To reach this determination the respondent initially uses the Personal Care Screening Tool, a computer program it believes will allow it to

consistently determine the number of hours required by each recipient. The screening tool allots a specific amount of time in each area the recipient requires help, which the respondent's reviewer can then adjust to account for variables missing from the screening tool's calculations. The respondent will often adjust the tool's results based upon established time allowances and considerations of petitioner's medical records.

Petitioner argued that she has had PCW services since 2004, and commented that she finds herself having to complete certain tasks on her own, after her caregiver leaves. This corroborates the petitioner's recent medical documentation, and tells me that petitioner is largely capable of attending to her activities of daily living independently. I also note that petitioner did not provide specific times necessary for providing the PCW services, but instead testified that more time was needed because of petitioner's unique circumstances and needs. Nothing was quantified. Without a better way to quantify the time for services, however, I find it difficult to approve time. The problem with family members being the personal care workers is that they may take more time to do care tasks due to inexperience or extra carefulness, and thus the Department has set maximum times for a typical care worker. In addition, while it is true that PCW services were authorized in the past, the record demonstrates that petitioner's health circumstances have measurably improved.

Petitioner should be aware that if her provider can show a medical need for PCW time in the future, it can always submit a request for PCW services with evidence to show the need for the PCW time. However, based upon the evidence before me I cannot conclude that the denial here was wrong.

CONCLUSIONS OF LAW

The respondent's denial of petitioner's PCW hours was appropriate based upon petitioner's medical needs and the Department's policies for PCW approval.

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, **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 27th day of September, 2016

\s _____
Peter McCombs
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 27, 2016.

iCare
Division of Health Care Access and Accountability