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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: HMO - 207916

PRELIMINARY RECITALS

Pursuant to a petition filed on March 2, 2023, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Medicaid Services, by its agents, regarding the denial of a request for coverage of personal care worker services hours under Medical Assistance (MA), a hearing was held on May 4, 2023, by telephone. A hearing set for April 27, 2023, was rescheduled at the Division's request due to the ALJ requiring surgery.

The issue for determination is whether the Wisconsin Department of Health Services by its assigned HMO agent, MHS Health Wisconsin, correctly denied the petitioner's request for 74 units of personal care worker ("PCW") services because she was determined to be independent in all areas of activities of daily living.

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: Michele Rocca, R.N., Nurse Consultant
Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 19-year-old resident of Milwaukee County. She is [REDACTED] tall, and weighs [REDACTED] lbs. She lives with her mother, [REDACTED], and two siblings. One sibling is an adult working out of the home, and the second is a twin of the petitioner attending a [REDACTED]. [REDACTED] is also the petitioner's primary personal care worker.
2. The petitioner has a history of autism, ADHD, paranoid schizophrenia with psychosis, major depressive disorder, anxiety and asthma. She also presents with "unspecified intellectual disabilities." She is not incontinent. She does require some assistance with [REDACTED]. She remains enrolled in high school until age 21, with a focus on life training secondary to her mental delays. She needs reminders for her personal skills and medication use. She takes trazadone (PM), Wellbutrin (AM), haloperidol (PM), and Benztropine (PM). She uses a Dulera inhaler.
3. In June, 2022, the petitioner was admitted to [REDACTED] for self-harm induced behaviors, [REDACTED].
4. The petitioner had been receiving coverage from the HMO of 140 units of PCW services per week in the past year.
5. On January 17, 2023, a Personal Care Screening Tool was performed by [REDACTED] R.N. for Med Group Home Health Care LLC. RN [REDACTED] found among other relevant items, that: the petitioner is able to bathe herself in a shower or tub, but requires the presence of another person intermittently for supervision and cueing; is able to dress her upper body if clothing is laid out or handed to her; is able to dress her lower body if clothing is laid out or handed to her; is able to groom herself but requires the presence of another person intermittently for supervision and cueing; is able to feed herself without assistance; is able to move about by herself; can toilet herself; can transfer herself without assistance; needs reminders with medication setup (with reminders she takes her own meds); has no nursing cares; and does not have seizures. It was found to be, based upon report, that she sometimes is aggressive if she did not take her medications; and she does not have any medical conditions that cause her to be more time-consuming in personal cares. She needs assistance with transport to medical appointments; with meal preparation, laundry, grocery shopping, eyeglasses care, dish-washing, and light housekeeping. This PCST by [REDACTED] did not find that the petitioner required any hours of care from a PCW. See, Exhibit #1, attached PCST by [REDACTED], R.N., dated 1/17/23. And see, Exhibit #1, attached Summary Letter of RN. Peggy Corp, dated March 21, 2023.
6. RN [REDACTED] noted that "The client can lift her arms above her shoulders, able to bend at the waist, dress her upper and lower body, stand for long periods, and able to walk long distances." Exhibit #1, attached PCST by [REDACTED], R.N., dated 1/17/23, at p.10 of 10.
7. On January 18, 2023, a second Personal Care Screening Tool was performed by [REDACTED], R.N. for Greenspan Home Health Care, LLC. RN [REDACTED] found among other relevant items, that: the petitioner is able to bathe herself in a shower or tub, but requires physical intervention to ensure task completion, ensure safety from self-harm behaviors, schizophrenia and ADHD, noting that this is a new skill needing intervention to ensure completion; able to dress her upper body with constant supervision to ensure completion; is able to dress her lower body with constant supervision to ensure completion; needs partial assistance to groom herself but requires a PCW to provide physical assistance for all hair cares and nail care; set up for oral and deodorant cares, and assistance due to autism, self-harm behavior, mental delays and paranoid schizophrenia; is able to feed herself, but

needs set-up and PCW assistance with set-up as petitioner cannot cut food or prepare plates without assistance due to autism, self-harm behavior, mental delays and paranoid schizophrenia; is able to move about by herself but requires intermittent supervision and cueing; can toilet herself but requires constant supervision with physical intervention to ensure task completion with estimated PCW assistance 3 times per day and estimated PCW assistance with using toilet and change menstrual products 1 time per day; can transfer herself without assistance; needs physical assistance with medication setup and administration 2 times per day, 7 days per week; she uses a nebulizer up to 3 times per day and needs PCW setup; she does not exhibit behavior more than once per week that interfere with PCW cares; she does not have rare medical condition that presents a unique challenge for caregivers; and does not have seizures. RN [REDACTED] recommended 74 units per week of PCW services for the petitioner. See, Exhibit #1, attached PCST by [REDACTED], R.N., dated 1/18/23.

8. On or about January 20, 2023, under cover sheet from Greenspan Home Health Care, the petitioner's designated personal care worker services provider, filed a prior authorization request with the petitioner's HMO, i.e., MHS Health Wisconsin, together with (R.N. [REDACTED]) Personal Care Screening Tool ("PCST") of January 18, 2023, a Plan of Care executed on January 19, 2023, and Physician's Orders dated January 11 2023 (Dr. Patrick Fuller, M.D.); all considered together requesting 74 units of PCW services per week, i.e., 18.5 hours per week or approximately 2.64 hours per diem for the petitioner. The PCST was apparently that tool described in Finding of Fact #5, above, from RN. [REDACTED].
9. On or about January 31, 2023, the petitioner's HMO, MHS Health Wisconsin issued a notice to the petitioner and her provider informing her that request for a continuance of her Personal Care Worker services at the rate of 74 units per week had been denied. Immediately thereafter, the petitioner "grieved" the denial to the HMO in their internal review process. Benefits were ordered to continue during the grievance process.
10. On or about February 14, 2023, MHS Health Wisconsin physician Kumble Rajesh reviewed the petitioner's request, her background clinical documentation and the results of a telephonic functional assessment and concluded that her request for PCW services would be denied because the member/petitioner does not meet the criteria for the requested PCW services as there is no clinical documentation to substantiate a need for daily hands-on assistance with Activities of Daily Living. Dr. Rajesh determined the requested PCW services were not medically necessary. A denial letter was sent that day. Exhibit #1, attached Summary Letter of RN. Peggy Corp, dated March 21, 2023.
11. Apparently, benefits continued and the denial of PCW services grievance (filed by the petitioner) was referred for final internal review by the HMO Grievance Committee.
12. On March 2, 2023, the MHS Health Wisconsin HMO Grievance Committee reviewed the materials described in Finding of Fact #6, and PCST allocation table; found increases in the petitioner's independence with all areas of activities of daily living; acknowledged that she has ongoing needs; found that she did not have needs for any personal care hours; and denied the petitioner's request for PCW services after reviewing the materials finding that the allocation table recommended 0 hours of PCW services per week were needed by the petitioner. The Committee determined the request was: "Denied-Medical Necessity NOT Evident." Benefits were ordered by the HMO to continue until March 13, 2023. See, See, Exhibit #1, attached HMO "Rationale" notes of 3/1/23.
13. On March 2, 2023, the petitioner filed an appeal for a state fair hearing with the Division of Hearings & Appeals contesting the MHS Health Wisconsin HMO Grievance Committee decision of March 2, 2023 to deny her request for PCW services. She requested continued benefits, and the Division of Hearings & Appeals ordered continued benefits.

14. On March 21, 2023, the HMO Grievance Committee denial decision was re-affirmed and sustained by the Department's Nurse Consultant, Peggy Corp, RN, BS. She prepared the Summary Letter of Peggy Corp, RN - Medical Consultant, comparing the PCST assessment tools performed by Nurse [REDACTED] and Nurse [REDACTED], and she noted that no current clinical documentation supported the need for daily hands-on physical assistance with Activities of Daily Living for the petitioner. The Consultant concluded there were no medically necessary PCW services required by this patient.
15. On or about March 22, 2023, Medicaid/BadgerCare Nurse Consultant Michelle Rocca, R.N., B.S. issue a second Summary Letter, noting RN Corps detailed letter approving of the HMO denial of PCW services and adding her opinion that the 74 units per week of PCW services for the petitioner was not covered by Medical Assistance under MA rules because it is "not medically necessary" and the HMO denial was reasonable and should be upheld. See, Exhibit No. 1, attached Summary Letter of Michelle Rocca, R.N., Nurse Consultant.
16. The petitioner's mother admitted at the hearing that the petitioner can brush her teeth, wash her face, feed herself, ambulate and perform most transfers, and dress with light assistance and the laying out of her clothing. She admitted the petitioner can toilet without assistance but does require some assistance with menstrual hygiene. She reported that the petitioner needs help with medication setup and reminders for administration. She testified that asthma affects her daughter's ability to run. She also reports that the petitioner requires assistance in the shower, shampooing and combing her hair as she doesn't like to wash or comb it.

DISCUSSION

Under the discretion allowed by Wis. Stat. § 49.45(9), the Department now requires MA recipients to participate in HMOs. Wis. Admin. Code § DHS 104.05(2)(a). MA recipients enrolled in HMOs must receive medical services from the HMO's providers, except for referrals or emergencies. Admin. Code § DHS 104.05(3).

The criteria for approval by a managed care program contracted with the State's DHS are the same as the general MA criteria. See Admin. Code § DHS 104.05(3), which states that HMO enrollees shall obtain services "paid for by MA" from the HMO's providers. The Department must contract with the HMO concerning the specifics of the plan and coverage. Admin. Code § DHS 104.05(1).

If the enrollee disagrees with any aspect of service delivery provided or arranged by the HMO, the recipient may file a grievance with the Department or appeal to the Division of Hearings and Appeals. Just as with regular MA, when the Department denies a grievance from an HMO recipient, the recipient can appeal the Department's denial within 45 days. Wis. Stat. § 49.45(5); Admin. Code § DHS 104.01(5)(a)3.

The present matter involves the petitioner's appeal of the Department's and HMO's denial of an authorization request for personal care worker (PCW) services. 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). Wisconsin Medicaid only reimburses for “medically necessary” services, as defined under Wis. Admin. Code § DHS 101.03(96m).

The petitioner has no apparent physical infirmities that render it necessary that she receive personal care worker services. She is overweight at her height, with a BMI of about [REDACTED] (Exhibit #1, attached clinical notes dated January 11, 2023, from Dr. Patrick Fuller.) But there is no demonstration of any instability in standing or basic ambulation or transfers. Nor does she have any trouble raising her arms or extremities about the shoulder to use her arms and hands. Nor is there any physical problem evident or documented which prevents independent showering, grooming, face-washing, brushing her teeth, basic toileting, eating, or dressing. I accept the testimony that the petitioner cannot run due to her asthma, and her significant BMI. (I note her BMI has been decreasing in recent evaluations.)

The problems here en toto amount to behavioral and cognitive issues that affect the petitioner’s willingness to engage in showering, shampooing and hair maintenance; and in needing set-up and prompts for medication administration. She also requires some prompts and assistance with the 5 days per month of her hygienic needs during menstruation. Dr. Fuller’s clinical notes make it clear this young woman lacks some insights in to the nature of life processes and daily living due to cognitive limitations.

Two different Personal Care Screening Tools were developed by two different nurses, almost simultaneously. Nurse [REDACTED] assessment produces no hours of PCW services. Nurse [REDACTED] assessment indicates 74 units per week of PCW services are necessary.

I have no trouble reconciling the MHS Health Wisconsin conclusion with the observations and written comments made by the two nurses during their assessments, along with the medical records, which largely corroborate the agency’s denial determination. The distinction is that [REDACTED] assessment clearly finds that hands-on PCW services are not required. [REDACTED] assessment finds several areas where, in essence, supervision, cueing or prompting of another is necessary to prod the petitioner to completion of all ADLs. These are informal supports, i.e., unpaid supports provided by a family member, not PCW services that are medically necessary. The petitioner can perform these tasks. She herself presents behavioral and personal emotional barriers to doing so. The clinical evidence in the record taken as a whole is insufficient to establish the *medical necessity* of the requested 74 units of PCW services per week to perform such Activities of Daily Living.

It is the duty of the requesting provider to justify the need for the services sought. I find that the petitioner, and her provider, have not established by a preponderance of the evidence (clinical or otherwise) in this record that the requested personal care worker services are medically necessary for assistance with bathing, grooming, dressing/undressing, or other assistance with mobility or incidentals. Rather, these records establish that she needs care that consists of supervision, cueing or prompting, to perform cares herself, not direct personal cares by a PCW. I will affirm the HMO denial of the requested PCW services under the facts presented in this record.

As a sidenote to the petitioner and her mother, nothing in this decision prevents the petitioner from having her provider file a new Prior Authorization Request with better clinical documentation that may improve the likelihood of approval of some level of PCW services. Here, more detailed and current behavioral and/or mental health treatment records in addition to the standard PCW service and assessment tools may be of efficacy. In the event of the development of such evidence, the provider must make a new PA Request in full directly to the Division of Medicaid Services in the usual PA/R format.

CONCLUSIONS OF LAW

The HMO correctly denied the petitioner's PA request for PCW services; she has provide insufficient medical documentation to establish the medical necessity of the requested 74 units per week of PCW services.

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, 4822 Madison Yards Way, 5th Floor North, 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

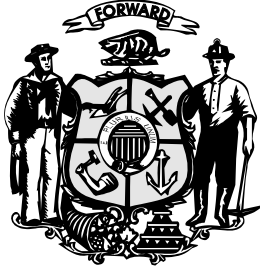
You may also appeal this decision to the Circuit Court in the county where you live. Appeals must be filed with the Court and served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, and on those identified in this decision as "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 15th day of May, 2023

vs 

Kenneth D. Duren
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 15, 2023.

Division of Medicaid Services