



FH

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

HMO/169232

PRELIMINARY RECITALS

Pursuant to a petition filed October 05, 2015, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on December 22, 2015, at Milwaukee, Wisconsin.

The hearing was originally scheduled for December 2, 2015. At the scheduled time, I attempted to contact the petitioner at three different numbers. I was unable to reach her, and unable to conduct the phone hearing. After this scheduled time, the petitioner contacted me. She stated that she did not know what had happened with her phone. She still wanted a hearing. I rescheduled her hearing to December 22, 2015.

The issue for determination is whether the respondent correctly modified the petitioner's request for Personal Care Worker (PCW) hours.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

||

Respondent:

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

By: Attorney Liz Bartlet

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

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Milwaukee County.
2. The petitioner is enrolled in the iCare Medicaid program.
3. On April 8, 2015 the petitioner's home health provider, [REDACTED] completed a Personal Care Screening Tool (PCST).
4. On June 10, 2015 the petitioner's provider submitted a request for prior authorization of PCW hours based upon the aforementioned PCST. Specifically, the petitioner's provider requested 29.75 hours per week for 53 weeks
5. The respondent notified petitioner in writing that it approved 10.5 hours per week of PCW hours. The petitioner appealed this decision through the iCare grievance process. On August 25, 2015 the iCare Grievance and Appeal Committee heard the petitioner's appeal. The Committee determined that the petitioner should be approved for 24.5 hours per week of PCW time. The petitioner was approved for 24.5 hours per week.
6. The petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on October 8, 2015.
7. The petitioner lives with family.
8. The petitioner has diagnoses of Rheumatoid Arthritis, Pinched Nerve-Cervical Disc/Arm, Bronchitis, Osteoporosis, Diabetes, and Visual Disturbances.

DISCUSSION

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

The criteria for approval by a managed care program contracted with the Department are the same as the general MA criteria. See Adm. 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. Adm. 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), Adm. Code, §DHS 104.01(5)(a)3.

This appeal concerns Personal Care Worker (PCW) Services. Personal Care Services are a covered service by Medicaid. They are defined 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. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care." Wis. Admin. Code DHS §107.112(1)(a).

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under Wis. Admin. Code DHS §107.11(2), that are needed to treat a recipient's medical condition or to maintain a recipient's health. Wis. Admin. Code DHS §107.112(b).

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;

8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code. §DHS 101.03(96m)

The petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

The petitioner's provider originally requested 29.75 hours per week of PCW time. The HMO originally modified the request allowing for 10.5 PCW hours per week. The petitioner went through a grievance process with the HMO. Following this grievance process, the HMO allowed for 24.5 hours per week of PCW hours. At the hearing the petitioner requested 29.75 hours per week of PCW time.

In determining how many hours of personal care services an individual is allowed, a service provider completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located on the Forward Health website: <https://www.forwardhealth.wi.gov/WIPortal>, under topic number 3165. The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table.

The Personal Care Activity Time Allocation Table is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165*; this chart can also be found at the aforementioned website.

In general seven activities of daily living (ADLs) are reviewed: 1) Bathing, 2) Dressing, 3) Grooming, 4) Eating, 5) Mobility, 6) Toileting, and 7) Transfers. In addition, Medically Oriented Tasks (MOTs), such as glucometer readings or medication assistance, are also examined.

The petitioner has diagnoses of Rheumatoid Arthritis, Pinched Nerve-Cervical Disc/Arm, Bronchitis, Osteoporosis, Diabetes, and Visual Disturbances. At the hearing the petitioner requested PCW time for preparing food, washing clothes, bathing including getting in and out of the tub, dressing, and mobility. The HMO allowed for PCW time to help the petitioner with bathing, dressing, grooming, mobility, toileting, and assistance with medications.

Per the on-line Provider Handbook, topic 3167, additional time may be allocated for incidental cares, such as light meal preparation, incidental laundry, or light cleaning after bathing or grooming petitioner. For an individual who does not live alone, time equal to 1/4 of the time it actually takes to complete Activities of Daily Living (ADLs) and Medically Oriented Tasks (MOTs) may be allocated. For an individual who lives alone, time equal to 1/3 of the time it actually takes to complete Activities of Daily Living (ADLs) and Medically Oriented Tasks (MOTs) may be allocated.

The HMO allowed for an additional ¼ of the total ADL time for activities incidental to daily living. The petitioner highlighted that she needed additional assistance preparing food, and washing clothes because there was only one washer and dryer and the PCW had to go up and down the stairs to get to the washer and dryer. Because the petitioner lives with family the maximum amount of time allowed is ¼ of the total ADL time. The HMO allotted this maximum allowable time.

It is the petitioner's burden to establish the necessity of the requested time. The petitioner did not explain why the HMO's calculation of need was flawed. The HMO allowed for time in all of the areas the petitioner requested. The petitioner did not articulate what quantity of additional time is needed for each

task or what specific behaviors justify more time. Nothing was quantified. The HMO's analysis of petitioner's needs is the most thorough and credible determination in the record.

The HMO testified that through their grievance process their chief medical officer reviewed the determination, and believed that 24.5 hours per week was sufficient to meet the petitioner's needs given her current medical conditions. The Department's nurse consultant reviewed the HMO's decision. That nurse consultant provided a separate letter supporting the HMO's determination. The petitioner offered no specific rebuttal. The petitioner must offer some specificity and evidence to support the requested time. Without a better way to quantify the time for services, I have no basis upon which to find in favor of the petitioner's request for PCW hours.

The petitioner should be aware that if her provider can show a medical need for more time, it can always request an amendment or a new prior authorization for additional time with evidence to show the need for the additional time. However, based upon the evidence before me I cannot conclude that the respondent's reduction was wrong.

CONCLUSIONS OF LAW

The Department correctly modified the PCW hours requested, approving 24.5 hours per week of PCW time.

THEREFORE, it is

ORDERED

That the petition 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 Milwaukee,
Wisconsin, this 2nd day of February, 2016

\sCorinne Balter
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 February 2, 2016.

iCare
Division of Health Care Access and Accountability