



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/170133

PRELIMINARY RECITALS

Pursuant to a petition filed November 12, 2015, 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 in regard to Medical Assistance, a hearing was held on February 08, 2016, at Janesville, Wisconsin.

The issue for determination is whether the Department erred in its modification of the PA for personal care from 34.25 hours per week to the approved amount of 30.25 hours per week.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: [REDACTED], RN

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Rock County.

2. On 10/5/15, Accura Home Health submitted a PA request [REDACTED] for 34.25 hours of PCW services for petitioner per week.
3. Following a manual review of the PA request by a nursing consultant at the Department, the Department approved 30.25 hours per week.
4. Petitioner appealed.

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 determining the number of PCW hours to authorize, the OIG uses the standard above along with the general medical necessity standard found at Wis. Adm. Code, § DHS 101.03(96m). Essentially the medical necessity standard requires a service to be basic and necessary for treatment of an illness, not necessarily the best service possible, and not just for convenience. To determine the number of PCW hours to authorize the OIG uses the Personal Care Screening Tool (PCST), a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The PCST allots a specific amount of time in each area the recipient requires help, which the OIG's reviewer can then adjust to account for variables missing from the screening tool's calculations.

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).

It is petitioner's burden to establish the necessity of the requested time. At the time of hearing, the Department RN consultant explained that there were three areas that were reduced that resulted in the final modification: (1) dressing, (2) AFO placement and removal; and, (3) eating assistance. The Department explained that the petitioner was asking for three dressing episodes per day. Based on the

hearing testimony, it appears that the petitioner did not realize that one episode of dressing was included in the bathing time already granted elsewhere. Given that, the Department approved only 20 minutes per day for the second episode of dressing. This does not appear to be error as it appears that the petitioner's agency misunderstood that bathing includes one dressing. After discussion at hearing petitioner's caregiver conceded "bathing is fine then, dressing is fine."

The Department also explained that it granted 70 minutes per week of time for a task (AFO placement) that petitioner is entitled to even though the PA did not request it. The caregiver conceded "that's my error."

The final area changed by the Department relates to eating. The PA modified the time for eating to be zero minutes per week. The Department explained that petitioner only needs meal preparation and setup of food. The Department explained that the eating category is only for a person who needs assistance feeding. The Department cited appropriate language from the PCST instructions indicating that "eating assistance" is not to include meal preparation such as cutting, spreading, etc. and that such preparation is included as part of the time granted for time incidental to tasks. Petitioner's caregiver argued that the manner in which time for services incidental to tasks is calculated is not fair because it is a fixed percentage of the other time granted in the PA. The Department conceded that this is indeed how incidental time is calculated. But, petitioner did not explain why that is unfair or unreasonable. More importantly, petitioner failed to explain how much time she was seeking for eating assistance that was not otherwise captured in the granted time: "I didn't do a calculation in that regard so I can't tell you exactly."

CONCLUSIONS OF LAW

The Division did not err in modifying the PA request.

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, 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 1st day of March, 2016

\sJohn 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 March 1, 2016.

Division of Health Care Access and Accountability