



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

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In the Matter of

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

DECISION

MPA/170585

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 04, 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 January 12, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly denied the petitioner’s prior authorization request for Personal Care Worker (PCW) hours.

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

ADMINISTRATIVE LAW JUDGE:

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner is a resident of Milwaukee County.
2. On June 10, 2015 the petitioner’s provider completed a Personal Care Screening Tool.

3. On August 11, 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 36.75 hours per week of PCW time for 53 weeks. The provider requested an additional 24 hours per year of PRN or as needed time. This was at a cost of \$34,435.
4. On November 17, 2015 the respondent notified petitioner in writing that it denied her prior authorization request.
5. The petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on December 7, 2015.
6. The petitioner lives alone.
7. The petitioner is a 63 year old with a history of osteoarthritis in bilateral knee, hypertension, dizziness, hyperlipidemia, and GERD.

### DISCUSSION

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 requested 36.75 hours per week of PCW time. This amounts to 5.25 hours per day of PCW services. They further requested an additional 24 hours per year of as needed PCW time. The Department denied this request. At the hearing the petitioner noted that the petitioner previously received 3.25 hours per day of PCW time. They requested more time with this PA because the petitioner’s dizziness has led to incontinence issues.

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 is a 63 year old with a history of osteoarthritis in bilateral knee, hypertension, dizziness, hyperlipidemia, and GERD. The Department highlights that the three most recent doctor visits the petitioner was noted to be feeling well with improved knee pain. There was an issue with her blood pressure being too low. When she went to the doctor in January 2015 and April 2015 her blood pressure was low. The petitioner takes blood pressure medication. Her doctor lowered her blood pressure medication. At her August 2015 doctor visit, her blood pressure was not nearly as low.

The petitioner's daughter contends that despite these doctor notes, her mother's blood pressure is an issue. She argues that this low blood pressure causes dizziness with position changes, which has led to incontinence issues. These issues are not noted in the petitioner's medical record. Regardless, I do not find this testimony credible. If the issue is dizziness because the petitioner's blood pressure is too low, and she is on medication to lower her pressure, the response should be to follow up with the doctor, not to seek additional PCW hours to help her mother with the low blood pressure issue.

The petitioner's daughter further notes that the petitioner has arthritis in her knees and fingers, and a torn rotator cuff. The medical records do not support the torn rotator cuff. With respect to the knee issue, the petitioner has pain in both of her knees; however, I am not convinced that the petitioner needs a PCW to compensate for this pain. I agree with the Department that the petitioner could benefit from durable medical equipment. I fail to see how arthritis in the petitioner's fingers cause a need for PCW services.

The petitioner's daughter states that she does not understand how the Department can deny their request based off of a 30 minute doctor visit. The Department mentions three, not one, doctor visit. It is also concerning that the PCST and the doctor visits seem to show two different people. With the doctor's visits the petitioner seems to be doing well. With the PCST the petitioner appears to need significant help. The PCST in this case appears to be largely self-serving. The petitioner's diagnoses do not appear to support this level of PCW time. That said, I believe that the petitioner relies on her daughters for help. The problem is that Medicaid only covers the most basic and necessary medical care. The assistance that the petitioner's daughters provide; is not considered medically necessary, and is not covered under the Medicaid program.

It is petitioner's burden to establish the necessity of the requested time. At the time of hearing, the petitioner did not offer testimony to articulate the quantity of time needed for each task. The Department's analysis of petitioner's needs is the most thorough and credible determination in the record. 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 the provider can show a medical need for more time, it can always request a new prior authorization. Also, if the petitioner's condition changes or worsens the provider may request a new prior authorization. However, based upon the evidence before me I cannot conclude that the Department's denial was wrong.

#### **CONCLUSIONS OF LAW**

The Department correctly denied the petitioner's prior authorization request for Personal Care Worker (PCW) hours.

**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 9th day of February, 2016

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\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 9, 2016.

Division of Health Care Access and Accountability