



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]

DECISION

MPA/170922

PRELIMINARY RECITALS

Pursuant to a petition filed December 18, 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 03, 2016, at Appleton, Wisconsin.

The issue for determination is whether the agency 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]

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 Outagamie County.
2. On August 13, 2015 the petitioner’s provider completed a Personal Care Screening Tool (PCST).

3. On September 16, 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 41.75 hours per week of PCW time for 53 weeks. The provider further requested an additional 24 hours per year of as needed PCW time. This was at a cost of \$44,735.00.
4. On November 19, 2015 the Department notified the petitioner in writing that it denied her prior authorization request for PCW hours.
5. The petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on December 21, 2015.
6. The petitioner lives with family.
7. The petitioner is a 68 year old woman who was in a motor vehicle accident in April 2014. She had multiple injuries to her stomach, femur, renal, spleen, and lung. She is in the intensive care unit (ICU), then a nursing home, and then she went home with PT and OT. She reportedly has anxiety, which requires psych care and medications. She is sometimes forgetful, and still has some pain as a result of the accident.

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)

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 41.75 hours per week of PCW time. They further requested an additional 24 hours per year of as needed PCW services. The Department denied this request, and did not allow for any PCW services. At the hearing petitioner requested 41.75 hours of PCW time. At a minimum, the petitioner requested the 26.25 hours per week of PCW time she was receiving prior to her accident.

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 68 year old woman who was in a motor vehicle accident in April 2014. She had multiple injuries to her stomach, femur, renal, spleen, and lung. She is in the intensive care unit (ICU), then a nursing home, and then she went home with PT and OT. She reportedly has anxiety, which requires psych care and medications. She is sometimes forgetful, and still has some pain as a result of the accident.

The letter from the Department indicates that they denied all PCW services. The Department reasons that the petitioner had been in a car accident. She was getting PCW services while recovering. She has now recovered, and no longer needs PCW services. They acknowledge that she was getting PCW services prior to the car accident, but state that those services were erroneously approved having never gone through the review process.

The petitioner's daughters highlight that their mother needs assistance throughout the day. They acknowledge that she has improved since her accident, but argue that she is not at the same place she was prior to the accident. Even prior to the car accident they maintain that the petitioner needed the PCW services.

The PCST states the following with respect to the petitioner's ADLs:

- Bathing
 - Unable to effectively participate in bathing and is totally bathed by another person.
 - "bathes in shower while sitting on bench – complete bath D/T pain from m/v accident and fx femur, stomach, lung and renal injuries."
- Dressing
 - Depends entirely upon another person to dress upper and lower body.
 - "D/T dizziness, weakness; pain needs assisted completely with dressing with decreased ROM; unsteadiness after accident on 4/14."
- Grooming
 - Depends entirely upon another person for grooming.
 - "needs shampoo, nails trimmed, oral hygiene set up and hair combed."
- Eating
 - Feeds self with constant supervision and physical intervention to ensure task completion.
 - "Had lost 30# and is gradually gaining it slowly and D/T needing encouragement to eat and unsteadiness and anxiousness."
 - Estimated at 3 times per day.
- Toileting
 - Toilets self or provides own incontinence care, with or without assistive device, under constant supervision and with physical intervention to ensure task completion.
 - "Needs strict supervision walking with cane or walker to BR as is unsteady and painful at times from fx femur from mva."
 - Estimated at 7 times per day.
- Transferring
 - Needs physical help of another person but is able to participate.

- “needs help up from all soft surfaces.”
- Medically Oriented Tasks – Medication Assistance
 - Needs physical help of a personal care worker
 - “Client forgetful – would forget to take meds.”
 - Estimated at 3 times per day.
- Delegated Nursing Acts
 - “MD orders for BS check 2x a day and PCW does them.”

The petitioner’s daughters testified that their mother needs assistance with bathing, eating, transferring, and grooming.

With respect to bathing, they testified that their mother needs help getting in and out of the shower, and washing some of her body due to decreased range of motion. Although she has a shower chair, she still needs help getting in and out of the tub. I find this testimony credible. It is consistent with the PCST, and I have allowed time for bathing in accordance with the time allocation table.

With respect to eating, the petitioner’s daughters testified that the mother had lost 30 pounds, and that she needs constant supervision, and assistance all day long with eating. The PCST states that the petitioner had lost 30 pounds, and was slowing regaining the weight back. I allowed time for eating three times per day in accordance with the time allocation table.

With respect to transferring, the petitioner’s daughters testified that they needed to help their mother get in and out of bed. Getting her into bed was easier though. I find this testimony credible, and have allowed time for transferring in accordance with the time allocation table.

With respect to grooming, the petitioner’s daughters testified that they needed to help their mother wash and brush her hair due to their mother’s limited range of motion. I find this testimony credible, and have allowed time for grooming in accordance with the time allocation table.

The petitioner’s daughters’ testimony did not support time allocation for other ADLs. Specifically, with respect to dressing her daughter indicated that with large button holes the petitioner can dress her upper body. Although she cannot handle zippers, there is nothing in the record showing that she cannot pull on elastic band pants. The daughters testified that their mother needs mobility assistance because they are afraid of falls, however, there is not a history of falls, and this would not be a covered category for PCW services. Her daughters testified that she is able to toilet on her own with the adaptive equipment. The daughters further testified that they need to help with the changing of bed sheets each week. This would be an incidental service, which I will discuss below.

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.

Thus, I have allowed for the following weekly PCW time:

Bathing – 30 minutes x 7 days = 210 minutes
 Grooming – 30 minutes x 7 days = 210 minutes
 Eating – 20 minutes x 3 meals x 7 days = 420 minutes
 Transferring – 30 minutes x 7 days = 210 minutes
 Incidental Time – 262.5 minutes

Total – 1312.5 minutes = **22 hours per week** (rounded up from 21.875)

I note to petitioner that the provider will not receive a copy of this Decision. In order to have the PCW hours approved here, petitioner must provide a copy of this Decision to the provider. Then, the provider must submit a *new* prior authorization request to receive the approved coverage.

CONCLUSIONS OF LAW

1. The Department incorrectly denied the PCW hours requested.
2. The petitioner requires 22 PCW hours weekly for the current authorization period.

THEREFORE, it is

ORDERED

That the petitioner’s provider is hereby authorized to provide the petitioner with 22 PCW hours weekly for the period beginning October 10, 2015, and to submit its claim, along with a copy of this Decision and a new prior authorization request, to ForwardHealth for payment. In all other respects, 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 26th 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 26, 2016.

Division of Health Care Access and Accountability