



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MPA/170970

PRELIMINARY RECITALS

Pursuant to a petition filed December 21, 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 April 07, 2016, at Milwaukee, Wisconsin.

This matter was originally scheduled for hearing on February 4, 2016. Petitioner’s daughter/representative, [REDACTED], asked to reschedule the hearing, because of a medical appointment.

Accordingly, the matter was rescheduled for February 25, 2016. On the date of hearing, Petitioner’s daughter asked to reschedule the hearing because she wanted her sister to testify, but her sister was unavailable due to her work schedule.

The hearing was then rescheduled to March 22, 2016. On the date of the hearing, Petitioner’s daughter asked that the hearing be rescheduled because the Petitioner’s mother just passed away.

The matter was then scheduled for April 7, 2016. The hearing took place as scheduled.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly modified the request of [REDACTED] to provide Personal Care Worker (PCW) services to the Petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Representative:

[REDACTED], Petitioner’s Daughter

Respondent:

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

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

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. September 9, 2015, [REDACTED] completed a Personal Care Screening Tool (PCST) and determined the Petitioner needed assistance with his activities of daily living as follows:
 - Bathing – Level E
 - Dressing Upper Body – Level E
 - Dressing Upper Body – Level E
 - Grooming – Level F
 - Eating – Level F
 - Mobility – Level C
 - Toileting – Level A (independent using the bathroom), but Level E for incontinence care, 10 times per day
 - Transferring – Level A (independent with the task)
 - Medically Oriented Tasks – Medication reminder twice per day(Exhibit 4, pgs. 11-14)
3. On September 9, 2015, [REDACTED], on behalf of the Petitioner, submitted a request for prior authorization of 196 units / 35 hours per week for 53 weeks of PCW services at a cost of \$64,612.50. (Exhibit 4, pg. 8)
4. On December 3, 2015, DHS sent the Petitioner and [REDACTED] notices advising them that it had approved 77 units / 19.25 hours per week of PCW services. (Exhibit 3)
5. On December 21, 2015, [REDACTED] submitted a Prior Authorization Amendment request, asking that the number of approved PCW hours be increased, by an unspecified amount. (Exhibit 4, pg. 69)
6. Also on December 21, 2015, the Petitioner’s wife, on behalf of Petitioner filed a request for fair hearing. (Exhibit 1)
7. On January 25, 2016, DHS issued a letter, increasing the approved PCW services to 119 units / 29.75 hours per week. This is 4.25 hours per day. (Exhibit 2)
8. Petitioner lives with his wife. (Testimony of [REDACTED], Petitioner’s daughter and Exhibit 4, pg. 11)
9. Petitioner is 64 years old. He previously suffered a stroke in 2013. He suffers from Alzheimer’s dementia and auditory hallucinations, and he wanders at night. (Exhibit 4, pg. 98)

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.

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, [REDACTED], completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located, under topic number 3165 on the Forward Health website:

<https://www.forwardhealth.wi.gov/WIPortal>

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), if any, are examined.

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*. A copy of the table was included as attachment 7 of the OIG letter, Exhibit 3.

The most recent letter from the Office of the Inspector General indicated that DHS allowed the following times for the following activities:

1. Bathing: 30 minutes per day x 7 days	210 minutes per week
2. Dressing: zero minutes per day	zero minutes
3. Grooming: 15 minutes per day x 7 days	105 minutes per week
4. Eating: 20 minutes x 2x per day x 7 days	280 minutes per week
5. Mobility: zero minutes	zero minutes
6. Toileting / Incontinence Care: 15 min. x 5x per day x 7 days	525 minutes per week
7. Transfers: zero minutes	zero minutes
8. MOTs: 5 minutes x 2x per day x 7 days	70 minutes per week
<hr/>	
Total:	1190 minutes week

Bathing

For bathing, DHS allowed the maximum amount of time permitted by the Personal Care Activity Time Allocation Table: 30 minutes per day x 7 days a week = 210 minutes per week.

Petitioner's daughter indicated that it can take 25 minutes to one hour to bathe the Petitioner, depending upon whether she lets the Petitioner soak in the tub.

Per page 4 of the PCST instructions¹, bathing means, "cleansing all surfaces of the body and bathing includes assistance with changing clothing, getting in and out of the tub or shower; wetting, soaping, and rinsing skin; shampooing hair, drying body, applying lotion to the skin, applying deodorant and routine catheter care." The task of bathing does not include soaking time and as such, a PCW cannot be paid to wait while the Petitioner soaks in the tub.

Based upon the foregoing, it is found that DHS correctly allowed 30 minutes per day for PCW assistance with the task of bathing.

Dressing

As noted above, one episode of dressing is included in the 30 minutes allowed for bathing.

DHS did not allow any additional time for dressing, because the Plan of Care submitted by [REDACTED] indicated that the PCW provides services to the Petitioner between 6:00 a.m. and 1:00 p.m. Petitioner's daughter confirmed this schedule in her testimony.

Because no PCW services are provided to the Petitioner in the evening, and because time for dressing is included in time for bathing, it is found that OIG correctly disallowed time for the task of dressing.

Grooming

Again, because the PCW only provides services in the morning and early afternoon, DHS correctly allowed time for one episode of grooming. The maximum amount of time allowed on the Personal Care Activity Time Allocation table is 15 minutes per episode of grooming, or 105 minutes per week.

Eating

OIG allowed 40 minutes for PCW assistance with breakfast and lunch meals, but did not allow time for the evening meal, because the PCW leaves at 1:00 p.m. and is not scheduled to be there at dinner time. The Petitioner's PCW testified that it can take 45 minutes to feed the Petitioner, because he is fidgety and can be come combative. However, additional time is allowed for behaviors in a separate calculation. As such, it is found that the 40 minutes allowed by DHS is appropriate, at this time.

Mobility

Although the Personal Care Screening Tool indicated that the Petitioner needed assistance with mobility, the Petitioner's daughter testified that the Petitioner is able to walk around safely using a cane or walker. In addition, the Plan of Care submitted by [REDACTED] indicates that the Petitioner is

¹ The PCST instructions can be found in attachment 8 of Exhibit 3. They may also be viewed on-line at:

<http://www.dhs.wisconsin.gov/forms/F1/F11133a.pdf>

independent with mobility. Accordingly, it is found that DHS correctly denied time for PCW assistance with mobility.

Petitioner's daughter testified that the Petitioner needs someone to walk next to him, but per page 8 of the PCW instructions, PCW services for mobility are only covered, if the patient requires physical intervention by the PCW. PCWs cannot be paid for watching a patient move about, nor can a PCW be paid for giving the patient verbal cues, such as reminders to use a cane.

Toileting

DHS allowed 525 minutes per week (15 minutes per episode x 5 episodes per day x 7 days per week). Petitioner's daughter/PCW testified that this sounded appropriate.

Transfers

The Petitioner's daughter testified that the Petitioner needs assistance getting up out of a chair or out of bed and that he has left sided weakness. However, the PCST indicated that the Petitioner is independent with transfers. Further, the most current medical record supplied by [REDACTED], dated June 24, 2015, indicates that the Petitioner had normal strength in his extremities, that an examination of his coordination did not reveal any tremors or dsymetria or dysdiadochokinesis and that his gait examination was unremarkable. As such, there is no medical evidence that the Petitioner requires assistance with transfers. It is found that DHS correctly disallowed time for this task.

Medically Oriented Tasks

Under Medically Oriented Tasks (MOTs), the PCST indicated that the Petitioner needs assistance with medication reminders twice per day. DHS allowed 70 minutes per week for assistance with medications. Petitioner's daughter / PCW testified that this was reasonable.

Total Time Needed for ADLs and MOTs

Based upon the foregoing, the actual time needed to completed Petitioner's ADLs and MOTs is as follows:

1. Bathing: 30 minutes per day x 7 days	210 minutes per week
2. Dressing: zero minutes per day	zero minutes
3. Grooming: 15 minutes per day x 7 days	105 minutes per week
4. Eating: 20 minutes x 2x per day x 7 days	280minutes per week
5. Mobility: zero minutes	zero minutes
6. Toileting / Incontinence Care: 15 min. x 5x per day x 7 days	525 minutes per week
7. Transfers: zero minutes	zero minutes
8. MOTs: 5 minutes x 2x per day x 7 days	70 minutes per week
<div style="display: flex; justify-content: space-between; margin: 0;"> Total: 1190 minutes week </div>	

Incidental Tasks

Per the on-line Provider Handbook, topic 3167, for individuals who live with another family member, time equal to 1/4 of the time it actually takes to complete Activities of Daily Living (ADLs) may be allocated for incidental cares such as changing and laundering linens, light cleaning in areas used during

personal care activities, eye glass care and hearing aids, meal preparation, food purchasing and meal service.

One fourth of 1190 minutes is 297.50 minutes, rounded to 298 minutes.

Behaviors

Petitioner’s daughter / PCW testified that the Petitioner can be combative and resistant to receiving assistance with his ADLs. The Plan of Care indicates that Petitioner also wanders. Per the on-line Provider Handbook, topic 4621, time equal to ¼ of the time it actually takes to complete Activities of Daily Living (ADLs) may be allocated when there are behaviors that interfere with the provision of personal care services. In this case, that would be an additional 298 minutes per week.

Thus, the total time allowed for PCW services works out to be:

1190 minutes per week for ALDs ad MOTs
+298 minutes per week for incidental activities
+298 minutes for behaviors that interfere with provision of PCW services

1786 minutes per week

1786 minutes ÷ 15 minutes per unit = 119 units per week
19 units per week = 29.75 hours per week or an average of 4.25 hours per day.

This is what DHS ultimately approved. As such, its modification was correct.

Petitioner should be aware that if the [REDACTED] can show that the Petitioner needs assistance in the evening and will have a PCW available for evening tasks, it can submit a new prior authorization request or an amended request seeking additional PCW hours. In addition, if [REDACTED] has other, more current medical documentation, showing an increased need for PCW services it can submit a new prior authorization request, on that basis also.

I note to the Petitioner that his provider, [REDACTED], will not receive a copy of this Decision. The Petitioner might want to share this decision with [REDACTED] for future reference.

CONCLUSIONS OF LAW

DHS correctly modified the prior authorization request of [REDACTED] to provide PCW services to the Petitioner.

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 28th day of April, 2016

\sMayumi M. Ishii
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 April 28, 2016.

Division of Health Care Access and Accountability