



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

In the Matter of

██████████
██████████
██████████████████

DECISION

MPA/172523

PRELIMINARY RECITALS

Pursuant to a petition filed March 08, 2016, 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 (MA), a hearing was held on May 04, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly modified the Petitioner’s PA request for personal care worker (PCW) services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████████████

Attorney ██████████
Disability Rights Wisconsin
6737 West Washington St.
Milwaukee, WI 53214

Respondent:

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

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. The Petitioner is 34 years old. She lives with family.

2. Petitioner's diagnoses include lumbago, chronic kidney disease, chronic migraines, systemic lupus erythematosus, degenerative joint disease. She reports heel, knee, back and joint pain and swelling/pain in arms and hands.
3. On March 4, 2015, Petitioner primary care provider Dr. [REDACTED] did a musculoskeletal and migraine assessment. He noted that Petitioner has chronic back and knee pain, chronic migraines, constant fatigue, tenderness and impaired sleep. He reported that her conditions limit the Petitioner's ability to sit, stand or walk. She has a lifting restriction of ten pounds. Migraines occur approximately 4x/week. She is at risk for falls.
4. On April 17, 2015, Petitioner had an emergency room visit for an evaluation of L knee pain and swelling that had occurred for more than one week. The physician noted decreased range of motion, mild swelling, effusion and tenderness. She was unable to bear weight on her knee.
5. On July 24, 2015, Petitioner was seen by her rheumatologist for follow up concerning her lupus, low back pain and knee pain. It was noted that she continues with frequent headaches and fatigue. The physician noted moderately advanced facet arthropathy in the Petitioner's spine and modest degenerative disc disease. He also noted functional ROM in shoulders, elbows, wrists, fingers, hips, knees, ankles and toes.
6. On October 15, 2015, Petitioner was seen by her rheumatologist. She complained of low back pain and frequent headaches. The physician noted diffuse tenderness in lower spine but stated she had reasonable ROM. He assessed bilateral low back pain with sciatica.
7. On November 4, 2015, Petitioner had an office visit with her therapist for back pain. She described her pain as 8/10. The therapist noted a lateral shift of trunk to R. She noted reduced lumbar range of motion and reduced range of motion with side bending. She noted that Petitioner was able to bend to reach knees. The therapist assessed the Petitioner with decreased range of motion, decreased strength, gait deviation, pain, decreased function, poor body mechanics and postural faults. A therapy plan for care was developed for November 4, 2015 – February 4, 2015.
8. On November 16, 2015, the Petitioner's provider Nurturing Concepts completed a Personal Care Screening Tool (PCST) for the Petitioner. The assessor determined the Petitioner has the following needs:
 - Bathing – Level D – Petitioner requires assistance with at least one step of activity and supervision to ensure task completion
 - Dressing – Upper – Level B
 - Dressing – Lower – Level D
 - Grooming – Level D – Petitioner requires assistance with set-up.
 - Eating – Level C – Petitioner requires assistance with meal prep and set-up.
 - Mobility – Level B – Petitioner needs stand-by assist; slow steady gait
 - Toileting – Level D – Petitioner requires assistance getting up from toilet and adjusting clothing; 2x/day
 - Transferring – Level D
 - Medication Assistance – Level B – 3x/day
9. On November 19, 2015, the Petitioner had a visit with the therapist. Petitioner reported pain as 7/10. The therapist noted that the Petitioner tolerated exercises.
10. On November 30, 2015, the Petitioner had a visit with the therapist. Petitioner reported pain as 7/10. The therapist noted an increase in symptoms attributable to Petitioner's weekend travel.

11. On December 14, 2015, a Long-Term Care Functional Screen (LTCFS) was completed for the Petitioner for the IRIS program. The assessor determined the Petitioner has the following needs
- Bathing – Level 1 – needs assistance due to pain in joints, back and swelling in hands; needs assistance with transfers in/out of tub; has grab bars; does not have a shower chair; can wash upper body but needs assistance with washing lower body due to inability to bend.
 - Dressing – Level 1 – needs assistance with upper and lower body due to swelling in arms and hands; Petitioner reports she can dress upper body 2x/week on average when she has less pain; needs assistance with sock/shoes due to not being able to bend
 - Eating – Level 1 – needs assistance with cutting up food due to swelling and pain in hands
 - Mobility – Level 1 – uses crutches and walker; experiences joint pain in legs and loss of balance; needs supervision or assistance due to joint pain; needs assistance with mobility several times/month when she has severe headaches
 - Toileting – Level 1 – uses sink/wall and/or crutches to assist with transfers on/off toilet due to pain in back and joints; needs assistance with cleansing due to swelling/pain in hands
 - Transferring – Level 1 - able to get from sitting to standing from couch but experiences significant pain; uses walker to assist with bed transfers.
 - Meal Prep – Level 3 – uses microwave to heat food; has trouble carrying plate from counter to table due to swelling in hands and mobility issues; needs assistance with grocery shopping, carrying groceries, putting groceries away
 - Medication Admin/Management – Level 2 - needs reminders to take medications when she experiences severe headaches; needs assistance opening pill bottles due to swelling and pain in hands.
 - Money Management – independent
 - Laundry – Level 2 – needs assistance to due severe headaches, joint and back pain
 - Telephone – independent
 - Transportation – Level 2 – can't drive due to stiffness and joint pain
12. On January 8, 2016, a PA was submitted by the Petitioner's provider Nurturing Concepts on behalf of the Petitioner requesting 19.5 hours/week of PCW services. The PA request was approved. On January 22, 2016, the provider submitted an amendment request. Following a review of the clinical documentation, the agency determined the PCW services were determined to be not medically necessary. The PA request was modified to end on April 16, 2016. A subsequent review took place and the agency approved 7.75 hours/week for the petitioner beginning April 17, 2016. The agency approved 210 minutes/week for bathing assistance, 70 minutes/week for dressing assistance for lower body and 70 minutes/week for grooming assistance. Based on 350 minutes/week of activities of daily living, the agency also allowed 117 minutes/week for services incidental to tasks. Total time approved was 467 minutes/week (7.78 hours/week).
13. On January 13, 2016, Petitioner had a visit with her rheumatologist. She reported that her low back pain and knee pain have not changed. She reported that she continued to have frequent headaches.
14. On February 25, 2016, Petitioner had a visit with her rheumatologist. She complained of a headache with aura over and around her R eye. She also complained of back pain. The physician

noted diffuse tenderness over areas of spine. He assessed chronic bilateral low back pain without sciatica and headache.

15. On March 8, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Personal care services are “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.” Wis. Admin. Code, §DHS 107.112(1)(a). Covered services include 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(b).

Personal care workers can spend no more than one-third of their time performing housekeeping activities. Like all medical assistance services, PCW services must be medically necessary and cost effective. Wis. Admin. Code, §DHS 107.02(3)(e)1 and 3.

In its summary of the basis for its decision, the agency lists only lumbago as the Petitioner’s diagnosis. I note that the Petitioner has numerous diagnoses that contribute to her need for personal care worker services including lupus which affects her joints, chronic migraines which affect her ability to care for herself and other medical conditions that impact her ability to care for herself.

The agency allowed 70 minutes/week for lower body dressing and 0 minutes for upper body dressing. The PCST instructions states that for upper body dressing, Level D is appropriate when a member needs partial physical assistance from another person. Examples include: member can put on shirt but cannot physically button it and member needs assistance pulling the shirt over the head.

Based on the information provided, I conclude that 70 minutes for lower body dressing is appropriate. I further conclude that the Petitioner requires assistance with upper body dressing based on her shoulder, hand and joint pain/swelling related to lupus that causes her to be unable to button shirts and pull shirts overhead. I conclude 70 minutes/week for upper body dressing is appropriate.

With regard to grooming, the PCST instructions state that grooming includes: washing face, hands and feet; combing/brushing hair; shaving; nail care; applying deodorant and oral care. Based on the evidence submitted, I conclude Level E is appropriate for the Petitioner. Specifically, Level E is appropriate for a member that needs partial physical assistance and examples include: member is able to brush teeth and apply deodorant but needs assistance combing hair and shaving; member is able to partially complete the task but requires assistance to fully complete grooming. The evidence presented by the Petitioner

demonstrates that the swelling and pain in her joints, particularly in her hands, results in the need for assistance with grooming tasks. In addition, she requires assistance with nail care and foot care due to the inability to reach her feet. At Level E, the Petitioner is eligible for 30 minutes/day for grooming tasks.

With regard to eating, the evidence demonstrates that the Petitioner requires assistance in the form of meal preparation, which includes cooking as well as set-up. The instructions for the PCST indicate that eating assistance is not to be checked if only assistance with meal preparation is needed. Time for meal preparation is included with time for services incidental to tasks. In this case, I conclude the evidence demonstrates that the agency properly determined no time should be allowed for eating.

For mobility, the PCST instructions indicate that the ability to move about the living environment is evaluated. Level B is appropriate when a member is able to move about by herself but requires the presence of another person intermittently for supervision or cueing. Level C is appropriate when a member is able to move about by herself but requires the constant presence of a PCW to provide immediate physical intervention during the performance of the task. In this case, the evidence demonstrates that the Petitioner occasionally requires physical assistance when moving about related to her migraine headaches. However, this is intermittent. Therefore, I conclude that Level B is the most appropriate level for the Petitioner. At that level, the agency correctly concluded that no time should be allowed for mobility.

With regard to toileting, the PCST instructions indicate that toileting includes transfers on/off the toilet, cleansing affected body surfaces and adjusting clothing. Level D is for members who need physical help from another person. The examples include: member needs assistance pulling up and buttoning pants; member needs assistance with pulling down pants, wiping and washing hands. Based on the evidence provided, I conclude the Petitioner requires assistance with transfers on/off the toilet, cleansing and adjusting clothing due to back pain and joint pain/swelling. The Petitioner's PCST indicates that she requires assistance 2x/day x 10 minutes. Therefore, I conclude 140 minutes/week for toileting is appropriate.

For transferring, the PCST instructions indicate that Level B is appropriate for members who are able to transfer with or without an assistive device but require the presence of another intermittently for supervision or cueing. The evidence demonstrates that the Petitioner is able to transfer herself from sitting to standing and is able to transfer in/out of bed with the use of a walker or cane. Therefore, I conclude the agency properly determined that no time would be allowed for transferring.

Though the PCST completed by the Petitioner's provider assessed Petitioner at a Level B for medication assistance, I conclude the evidence demonstrates that she requires assistance in opening medication containers. Level D is appropriate for members requiring that type of physical assistance. Therefore, I conclude it is appropriate to allow 10 minutes/day for medication assistance.

Based on the evidence presented, I conclude that the Petitioner requires 770 minutes/week of PCW assistance with activities of daily living. An additional 192.5 minutes/week is allowed for services incidental to tasks). Total time to be allowed for PCW assistance is 962.5 minutes/week (16 hours/week).

NOTE TO PETITIONER: This decision is issued only to the Petitioner and not to his provider, Nurturing Concepts. Petitioner must provide a copy of this decision to the provider. Nurturing Concepts must then submit a new PA request, along with a copy of this decision, to ForwardHealth to receive the services.

CONCLUSIONS OF LAW

The Petitioner is eligible for 16 hours/week of PCW services.

THEREFORE, it is

ORDERED

That Nurturing Concepts is hereby authorized to provide the petitioner with 16 hours/week of PCW services and to submit its claim, along with a copy of this Decision and a new prior authorization request, to ForwardHealth for payment.

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 17th day of June, 2016

\sDebra Bursinger
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 June 17, 2016.

Division of Health Care Access and Accountability
Attorney [REDACTED]