



FH

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

---

In the Matter of

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

DECISION

MPA/172859

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed February 26, 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 17, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly approved the prior authorization request of Independence First, to provide personal care services to the Petitioner in the amount of 29.75 hours per week.

NOTE: Post hearing the Petitioner submitted a copy of a daily schedule of tasks that she completes. The record was not held open for the submission of additional documents. However, given that Petitioner is not represented by an attorney, some latitude will be allowed. The schedule has been marked as Exhibit 7 and entered into the record.

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: 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. Petitioner has a complex medical condition with diagnoses of cerebral palsy, left hemiplegia, seizure disorder and cognitive delay. He has a complicated medication regimen. (Exhibit 4, pg. 11-16; Exhibit 6, pgs. 2 and 3)
3. On December 23, 2015, Independence First completed a Personal Care Screening Tool (PCST). Based upon that PCST, it appears that Independence First determined the Petitioner needed assistance with his activities of daily living as follows:

| Task  | Level of Need      | Maximum Time Allowed by Personal Care Activity Time Allocation Table <sup>1</sup> / requested on PCST |
|---|--------------------|---|
| Bathing   | Level D            | 35 minutes per day  |
| Dressing  | Level D            | 20 minutes per day  |
| Placement of a splint or brace (one on each leg; one for his left hand/wrist; and helmet for outings) |                    | 20 minutes per day  |
| Grooming  | Level F 2x per day | 30 minutes per day  |
| Eating  | Level E 2x per day | 40 minutes per day  |
| Mobility  | Level B            | Zero minutes per day  |
| Toileting   | Level D 5x per day | 50 minutes per day  |
| Transferring  | Level B            | Zero minutes per day  |
| Medically Oriented Task – Complex positioning   | Once per day       | 10 minutes per day  |
| Total before Incidental Tasks   |                    | 205 minutes per day   |
| Incidental Tasks = ¼ of total ADL time  |                    | 51.25 minutes   |
| Total PCW time  |                    | 256.25 minutes per day = 4.27 hours per day, rounded to 4.25 = 29.75 hours per week                   |

(Exhibit 4, pgs. 11-17)

4. On February 1, 2016, Independence First submitted a request for prior authorization of 119 units / 29.75 hours per week of personal care services. This request was based upon the December PCST described above. (Exhibit 4, pg. 9)

---

<sup>1</sup>The Personal Care Activity Time Allocation Table can be found on-line at:

<https://www.forwardhealth.wi.gov/WIPortal/Subsystem/KW/Display.aspx?ia=1&p=1&sa=47&s=3&c=565#PCSTAllocationTable>

5. On February 9, 2016, DHS sent Independence First a notice, advising them that it had approved the request for 29.75 hours per week of PCW services. DHS also approved an additional 24 hours per year to be used as needed. (Exhibit 4, pg. 24-25)
6. The Petitioner's mother/guardian filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 26, 2016. (Exhibit 1)

### 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, Independence First, completes a personal care screening tool (PCST).<sup>2</sup> 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/Subsystem/KW/Display.aspx>

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*.

In the case at hand, DHS approved the amount of PCW services that were requested by Independence First. The Petitioner asserts that Independence First erred when it completed the PCST and as such, it did not request sufficient services for Petitioner.

The Division of Hearings and Appeals does not have jurisdiction to review the actions of Independence First. The scope of our authority is limited to the actions of the Department of Health Services (DHS). I cannot find fault with DHS's decision to approve the 29.75 hours per week services that Independence First requested, because DHS cannot approve additional services that were not requested by the home health agency and that are not supported by the PCST.

I note that Exhibit 7 indicates that Petitioner's mother/PCW performs tasks not included in the December 2015 PCST such as range of motion exercises. If the Petitioner wants additional PCW hours, his mother/guardian will need to ask Independence First to complete a rescreen and submit a new prior authorization request, with clinical documentation and a physician order supporting the increase in services.

---

<sup>2</sup> Instructions for completing the PCST can be found on-line at:  
<https://www.dhs.wisconsin.gov/forms/fl/fl1133a.pdf>

If Petitioner is dissatisfied with Independence First, his mother/guardian can file a complaint with the Department of Health Services, Division of Quality Assurance at [REDACTED], or she can obtain a complaint form from the DHS website at: <https://www.dhs.wisconsin.gov/guide/complaints.htm>.

### CONCLUSIONS OF LAW

DHS correctly approved the prior authorization request of Independence First, to provide personal care services to the Petitioner in the amount of 29.75 hours per week.

**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 31st day of May, 2016

---

\s\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 31, 2016.

Division of Health Care Access and Accountability