



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION
Case #: MPA - 173732

PRELIMINARY RECITALS

On April 14, 2016, the above petitioner filed a hearing request under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to challenge a decision by the Division of Health Care Access and Accountability regarding Medical Assistance. The hearing was held on May 24, 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:

[REDACTED]
[REDACTED]
[REDACTED]

[Click here to enter text.](#)

Respondent:

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

By: [REDACTED]
Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. He is 67 years old and lives with his family.

2. Petitioner's diagnoses include degenerative joint disease, osteoporosis, asthma, neuropathy in his hands, chronic pain, shortness of breath. He has a history of multiple myocardial infarctions. His functional limitations include endurance, ambulation, dyspnea with minimal exertion and angina. He uses a cane or wheelchair and gloves. It is reported that the Petitioner fractured a thumb and two toes in the past year related to osteoarthritis. It is further reported that Petitioner has had several falls in the past year.
3. On January 12, 2016, a personal care screening tool (PCST) was completed for the Petitioner. The assessor determined the Petitioner has the following needs:

Bathing – Level D – PCW needed to assist with transfers in/out of tub; uses a shower chair; requires assistance with washing lower extremities and back, shampooing hair. Bathing requires 45 minutes due to low endurance, dyspnea related to compromised cardiac function and severe DJD in shoulders, hands, hips, ankles.

Dressing – Upper and lower – Level D – PCW to assist with clothing management, button/zippers due to decreased ROM, dexterity and neuropathy in both hands. Assist with socks, shoes, putting on pants, pulling clothing up, zippers and buttons.

Grooming – Level F – PCW to assist with all grooming tasks due to decreased ROM in shoulders, poor dexterity in hands related to severe DJD and osteoarthritis.

Eating – Level B – requires assistance with meal prep and set up. Needs assistance to encourage adequate nutrition related to history of poor appetite.

Mobility – Level C – Ambulates with a cane. PCW to provide elbow support for stability due to poor balance related to pain, dizziness and shortness of breath.

Toileting – Level D – PCW to assist with clothing management, fastening buttons/zippers, transfers due to poor balance, dizziness and decreased endurance, 3x/day.

Transferring – Level D – PCW to provide elbow support for stability due to poor balance, dizziness, shortness of breath when rising from seated or lying position.

Medication Assistance – has no medications.

Range of Motion – PCW to assist with ROM to upper and lower extremities 2x/day for up to 10 minutes each session to maintain joint mobility, maintain muscle tone, increase endurance and prevent contractures due to osteoarthritis.

The PCST allocated PCW time of 26.25 hours/week.

4. On March 9, 2016, the Petitioner's provider submitted a PA request to the agency for 28 hours/week of PCW services for the Petitioner.
5. On April 6, 2016, the agency issued a notice to the Petitioner approving 25.5 hours/week of PCW services for the Petitioner. Specifically, the agency approved time as follows:

Bathing – 315 minutes/week

Dressing – upper and lower – 140 minutes/week

Grooming – 210 minutes/week

Eating – 0 minutes/week

Mobility – 140 minutes/week

Toileting – 210 minutes/week

Transfers – 210 minutes/week

ROM – 0 minutes/week

SITs – 306.25 minutes/week

Total – 1225 minutes for PCW assistance with ADLs and MOTs = 306.25 minutes for SITs – 1531.25 minutes/week (25.5 hours/week)

6. On April 14, 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 this case, the agency approved time as requested for all tasks except for dressing and range of motion exercises. For dressing, the agency allocated 70 minutes/week for upper body dressing assistance and 70 minutes/week for lower body dressing assistance. The agency noted that one change of clothing is included in the bathing task. The agency did allocate additional time for the bathing task for the Petitioner due to needing extra time as a result of multiple medical issues. I conclude the agency reasonably allocated 140 minutes/week (20 minutes/day) for the dressing task.

With regard to range of motion exercises, the agency argues that ROM exercises must be directly supported by the member’s diagnoses and medical condition. It also notes that these exercises can typically be incorporated by the PCW with ADLs and additional time is allowed only if the exercises cannot be performed as part of ADLs. It notes that there is no evidence to indicate that ROM exercises cannot be incorporated by the PCW into the ADL tasks.

At the hearing, the Petitioner noted that his exercises include jumping jacks, shoulder exercises, back exercises and leg raises. He testified that he does the exercises every other day and that he does them while waiting for the bus. He stated that the exercises help him by reducing his pain.

Based on the evidence presented, I conclude that the agency is correct in finding that allocating time for ROM exercises is not warranted by the documentation presented with the PA. There is no indication why leg raises, shoulder exercises and other ROM exercises cannot be incorporated into the ADL tasks performed by the PCW.

Based on the evidence, I conclude the agency properly modified the PA request to 25.5 hours/week of PCW services.

CONCLUSIONS OF LAW

The agency properly modified the PA request to 25.5 hours/week of PCW services.

THEREFORE, it is **ORDERED**

That the Petitioner's appeal 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.

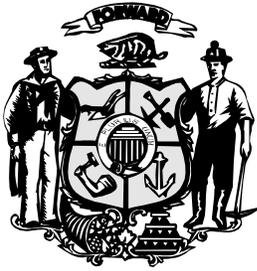
APPEAL TO COURT

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, **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 _____ day of July, 2016

\s _____
Debra Bursinger
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 19, 2016.

Division of Health Care Access and Accountability