



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

In the Matter of



**DECISION**

Case #: MPA - 173932

**PRELIMINARY RECITALS**

Pursuant to a petition filed on April 25, 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 regarding Medical Assistance, a hearing was held on July 6, 2016, by telephone.

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

NOTE: This hearing was originally scheduled to take place on June 1, 2016. On the date of hearing, the Petitioner asked to reschedule because she was not feeling well and because she wanted assistance from her daughter, who was acting as her PCW. Consequently, the hearing was rescheduled to July 6, 2016.

The hearing took place as scheduled. The Petitioner did not have anyone to assist her with the hearing. When asked if she still wanted to proceed on her own, the Petitioner indicated that she did, so the hearing was completed on July 6, 2016.

The Petitioner then called on July 14, 2016, to say that she missed the hearing on July 6, 2016, and to ask for a new hearing date. The Petitioner had apparently forgotten that we had completed her hearing on July 6, 2016. I told the Petitioner that we already had the hearing, but asked her if she wanted a new hearing date, anyway, since she didn't seem to remember having a hearing. The Petitioner stated to go ahead and issue a decision based on the record made on July 6, 2016, because what she said was "probably true". So, a new hearing date was not scheduled and this decision is now being issued.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

**Petitioner:**



Respondent:

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

By: OIG by letter  
 Division of Health Care Access and Accountability  
 PO Box 309  
 Madison, WI 53701-0309

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

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner is 54 years old and suffers from arthritis, chronic pain in her lower back, bi-polar affective disorder, depression, and anxiety. (Exhibit 2, attachment 3)
3. On February 17, 2016, [REDACTED] completed a Personal Care Screening Tool (PCST) for the Petitioner. Based upon that PCST, it appears that [REDACTED] determined the Petitioner needed assistance with her 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	30 minutes per day
Dressing Upper Body	Level D	10 minutes per day
Dressing Lower Body	Level D	10 minutes per day
Placement of a splint or brace (one on each leg; one for his left hand/wrist; and helmet for outings)		10 minutes per day
Grooming	Level E 2x per day	30 minutes per day
Eating	Level A	Zero minutes per day
Mobility	Level D	20 minutes per day
Toileting	Level D, 2x per day	20 minutes per day
Transferring	Level D	30 minutes per day

<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>

Medically Oriented Task – Medication Assistance	Level B	Zero minutes per day
Total before Incidental Tasks		160 minutes per day
Incidental Tasks = ¼ of total ADL time		40 minutes
Total PCW time		200 minutes per day = 3.33 per day = 23.33 hours per week

(Exhibit 3, pgs. 9-14)

4. On February 24, 2016, [REDACTED], Inc., submitted, on behalf of the Petitioner, a request for 94 units/23.5 hours per week of PCW services for 53 weeks at a cost of \$20,550.75. [REDACTED] also requested an additional 24 hours per year of PCW services, to be used as needed for times when Petitioner might have more acute episodes of pain. (Exhibit 3, pg. 5)
5. On April 14, 2016, DHS sent the Petitioner and [REDACTED] notices, that the request for PCW services was modified to 76 units /19 hours per week of PCW assistance. An additional 24 hours of assistance to be used as needed over the course of the year was also approved. (Exhibit 3, pgs. 34-39)
6. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 25, 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, [REDACTED], 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 generally allowable time for each activity. *On-Line Provider Handbook Topic #3165*. A copy of the table was included as attachment 1 of the OIG letter, Exhibit 2.

The 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 Upper Body:	zero minutes
3. Dressing Lower Body: 10 minutes per day, x 7 days	140 minutes per week
4. Grooming Set up: 10 minutes per day	70 minutes per week
5. Eating: zero minutes	zero minutes
6. Mobility: 20 minutes per day x 7 days	140 minutes per week
7. Toileting: 20 minutes per day x 7 days	140 minutes per week
8. Transfers: 30 minutes per day x 7 days	210 minutes per week
9. MOTs: zero minutes	zero minutes

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Total: 910 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. The Petitioner testified that this was adequate.

#### Dressing

Per page 4 of the PCST instructions, one episode of dressing is included in the 30 minutes allowed for bathing. The PCST instructions can be found in attachment 5 of Exhibit 2. They may also be viewed on-line at:

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

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<sup>2</sup> Instructions for completing the PCST can be found on-line at:  
<https://www.dhs.wisconsin.gov/forms/f1/f11133a.pdf>

The Petitioner testified that she is able to dress her upper body, but needs assistance with dressing her lower body. DHS allowed 10 minutes per day / 70 minutes per week for lower body dressing. The Petitioner testified that this was adequate.

Grooming

The Petitioner testified that she is able to groom herself, but needs assistance with set-up. DHS allowed for 5 minutes per day, twice a day, or 70 minutes per week for this task. Petitioner testified that this was adequate.

Eating

The Petitioner does not dispute the fact that she is able to feed herself. As such, it is found that DHS correctly denied PCW time for this task.

Mobility

DHS allowed the maximum of 20 minutes per day for mobility. Petitioner testified that this was adequate.

Toileting

DHS also allowed 20 minutes per day; 140 minutes per week for assistance with toileting. This is what the PCST asked for. The Petitioner testified that this was adequate.

Transfers

DHS allowed 30 minutes per day, 210 minutes per week for assistance with transfers. The Petitioner testified that this was adequate.

Medically Oriented Tasks

The Petitioner testified that she knows what her medications are and when to take them. However, given that she called a few days after the hearing, having forgotten that the hearing took place, gives me cause to believe she might need assistance with medication reminders. However, the Personal Care Activity Time Allocation Table and the PCST instructions indicate that Medicaid will not cover PCW assistance with medication reminders. As such, DHS correctly disallowed time for this task.

*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	210 minutes per week
2. Dressing Upper Body:	zero minutes
3. Dressing Lower Body:	140 minutes per week
4. Grooming Set up:	70 minutes per week
5. Eating:	zero minutes
6. Mobility:	140 minutes per week
7. Toileting:	140 minutes per week
8. Transfers:	210 minutes per week

9. MOTs: zero minutes  
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910 minutes per week

Incidental Tasks

The Petitioner testified that she lives with her sister who provides her with PCW assistance. Per the on-line Provider Handbook, topic 3167, for individuals who live alone, 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 910 minutes is 227.5 minutes.

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

910 minutes per week for ALDs  
+227.50 minutes per week for incidental activities  
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1137.5 minutes per week

1137.5 minutes ÷ 15 minutes per unit = 75.83 units per week rounded to 76 units per week  
76 units per week = 19 hours per week of personal care services.

Thus, DHS correctly modified the request for PCW services.

**I note to the Petitioner that her provider, [REDACTED] will not receive a copy of this Decision. The Petitioner might wish to provide a copy of this decision with her provider, who can, at any time, submit a new prior authorization request seeking additional services, if Petitioner’s condition changes and / or it obtains medical documentation to support the need for additional services.**

**CONCLUSIONS OF LAW**

DHS correctly modified a request from [REDACTED], Inc. to provide personal care (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, **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 12th day of  
August, 2016

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



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The preceding decision was sent to the following parties on August 12, 2016.

Division of Health Care Access and Accountability