



FH
[REDACTED]

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

In the Matter of

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

DECISION

MPA- 174588

PRELIMINARY RECITALS

On May 19, 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 (MA). The hearing was held on June 14, 2016, by telephone.

The issue for determination is whether the Department correctly reduced the petitioner's request for Personal Care Worker (PCW) hours.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI53703

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

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On March 4, 2016 the petitioner's provider completed a Personal Care Screening tool (PCST). The tool estimated that the petitioner required 41.5 hours of Personal Care Worker (PCW) time each week plus an additional 24 hours per year of as needed PCW hours.
3. On March 21, 2016 the petitioner's provider submitted a medical prior authorization request for Personal Care Worker (PCW) hours. The provider requested 44 hours per week of PCW time plus the additional 24 hours per year of as needed PCW hours.
4. On April 15, 2015 the Department notified the petitioner in writing that it approved 36 hours of PCW time per week plus 24 hours per year of as needed PCW hours.
5. On May 23, 2016 the Division of Hearings and Appeals received the petitioner's Request for fair hearing.
6. Following the petitioner's Request for Fair Hearing the Department reviewed the PCST and the modification of the petitioner's Request. The Department concluded that the petitioner requires 40.25 hours per week of PCW time. They amended the approval to allow for this additional PCW time.
7. The petitioner receives an additional 45.5 hours per week of PCW / supportive home care (SHC) time through the IRIS program.
8. The petitioner is 21 years old. He lives at home with family. He is diagnosed with autism, epilepsy, bipolar disorder, and obsessive compulsive disorder.

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 certified provider 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 § DHS 107.02(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).

The petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

The petitioner’s provider originally requested 44 hours per week of PCW time. They further requested an additional 24 hours per year of as needed PCW services. The PCST estimated the petitioner’s need at

41.5 hours per week of PCW time. The Department originally approved 36 hours per week of PCW services plus the 24 hours per year of as needed PCW time. After receiving the petitioner's request for fair hearing, and reviewing this prior authorization request, the Department approved 40.25 hours per week of PCW time. At the hearing petitioner requested 44 hours per week of PCW time.

In determining how many hours of personal care services an individual is allowed, a service provider completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located on the Forward Health website. 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*; this chart can also be found at the aforementioned website.

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), such as glucometer readings or medication assistance, are also examined.

The issue in this case is the difference of 3.75 hours per week of PCW time. It is the petitioner's burden to establish the necessity of the requested time. The PCST estimated the petitioner's need for PCW time at 41.5 hours per week. The Department approved 40.25 hours per week. This is nearly identical to the estimation of time on the PCST.

The petitioner's mother argues that the petitioner needs "additional time to cover all Personal Cares required for his care." The problem with this argument is that his mother does not quantify the time. She argues that he needs time for toileting, dressing, bathing, grooming, eating, laundry, safety precautions, and medications. She does not state the amount of time that each task takes. She provides the most detail in the areas of bathing and toileting. However, even in those areas there she is not specific enough. She cannot quantify the number of baths per day. She states at least two, but some days more. The petitioner will have tantrums and take off all his clothes. He gets very sweaty. Sometimes, he will masturbate somewhat uncontrollably. He has to be cleaned up after these incidences. A nurse practitioner wrote a letter stating the same concerns. The NP indicated that the petitioner had to be "cleaned up" after these incidences, but again no time was quantified. I am also not certain that a bath is needed to clean him up based upon the NP's letter. The mother stated that he needs assistance with the bathroom 10-20 times per day, but again this is a wide range that is not quantified.

The Department's analysis of petitioner's needs is the most thorough and credible determination in the record. With respect to bathing, the Department allowed the maximum amount of time allowed per the time allotment tool. Assuming that the petitioner gets sweaty, his mother may also be able to clean him without a full bath. With respect to toileting, the Department allowed assistance every two hours while the PCW is scheduled to be in the home. This is reasonable. There is no documentation of an underlining medical condition in which the petitioner would need to use the bathroom more frequently.

The petitioner's mother further argues that he has significant "Obsessive Compulsive behaviors and behavioral difficulties which increase the time necessary to complete his cares." The Department allowed additional time beyond the generally allowed time for these behaviors. I am unable to allow more time as the petitioner's mother does not quantify the amount of time needed for each task given these behaviors.

Ultimately the burden is on the petitioner in this case. There is no support for the 44 hours requested by the petitioner's mother. The PCST only recommended 41.5 hours. The Department approved 40.25 hours with a detailed quantified explanation of how this amount of time meets the petitioner's needs.

The petitioner's NP's letter does not support the 44 hours per week requested. Her letter states that she is addressing the cuts in PCW hours, and that the petitioner needs constant supervision. However, constant supervision is not a covered service through this program. This program only covers specific tasks of daily living. I further note that the petitioner receives an additional 45.5 hours per week of PCW / supportive home care (SHC) time through the IRIS program. The petitioner must offer some specificity and evidence to support the requested time. Without a better way to quantify the time for services, I have no basis upon which to find in favor of the petitioner's request for PCW hours.

The petitioner should be aware that if the provider can show a medical need for more time, it can always request an amendment or a new prior authorization for additional time with evidence to show the need for the additional time. However, based upon the evidence before me I cannot conclude that the Department's reduction was wrong. The petitioner may also request additional time through the IRIS program.

CONCLUSIONS OF LAW

The Department correctly reduced the petitioner's request for Personal Care Worker (PCW) hours.

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.

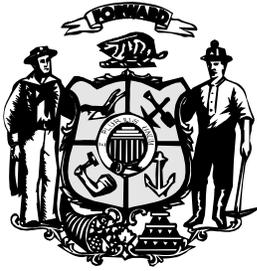
APPEAL TO COURT

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 14th day of July, 2016

\s _____
Corinne Balter
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 July 14, 2016.

Division of Health Care Access and Accountability