



FH
[REDACTED]

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

In the Matter of

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

DECISION
Case #: MPA - 174774

PRELIMINARY RECITALS

Pursuant to a petition filed on June 3, 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 (MA), a hearing was held on September 15, 2016, by telephone.

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

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, 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 Racine County.
2. Petitioner is 13 years old and has been diagnosed with Mitochondrial Myopathy, Speech/Language Disorder and developmental delays. Petitioner performs at the level of a five or six year old at school. She requires a knee brace because she dislocated her knee. (Exhibit 3, attachments 2 and 5)
3. On March 9, 2016, [REDACTED] completed a Personal Care Screening Tool (PCST). Based upon that PCST, it appears they 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 ¹ / requested on PCST
Bathing	Level D	30 minutes per day / 210 minutes per week
Dressing	Level D	20 minutes per day / 140 minutes per week
Placement of a splint or brace.		10 minutes per day, 3 times per week = 30 minutes per week
Grooming	Level E 2x per day	30 minutes per day / 210 minutes per day
Eating	Level B 2x per day	Zero minutes per day
Mobility	Level A	Zero minutes per day
Toileting	Level D 5x per day	50 minutes per day / 350 minutes per week
Transferring	Level A	Zero minutes per day
Medically Oriented Task – Complex positioning	NA	Zero minutes per day
Total before Incidental Tasks		940 minutes per week
Incidental Tasks = ¼ of total ADL time		235 minutes per week
Time for Behaviors = ¼ of total ADL time		235 minutes per week
Total PCW time		1410 minutes per week = 23.5 hours per week = 94 units per week.

(Exhibit 4, pgs. 16-21)

¹The 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>

4. On April 15, 2016, [REDACTED] submitted a request for prior authorization of 170 units / 42.5 hours per week of personal care services. This request was supposed to be based upon the March 9, 2016 PCST described above. (Exhibit 4, pg. 8)
5. On April 18, 2016, [REDACTED] submitted another prior authorization request for 170 units 42.5 hours per week of PCW services. (Exhibit 4, pg. 7)
6. On May 13, 2016, DHS sent the Petitioner and [REDACTED] notices advising them that it had modified the request for PCW services, approving 106 units / 26.5 hours per week of services. DHS also approved an additional 24 hours per year of PCW services to be used as needed. (Exhibit 4, pg. 22-27)
7. The Petitioner's mother/guardian filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 3, 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). 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>

Instructions for completing the PCST may be viewed on-line at:

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

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 #4621*. A copy of the table was included as attachment 7 of the OIG letter, Exhibit 2.

The letter from the Office of the Inspector General (OIG) indicated that DHS allowed for all of the time requested in the personal care screening tool:

Task	Level of Need	Maximum Time Allowed by Personal Care Activity Time
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		Allocation Table / requested on PCST
Bathing	Level D	30 minutes per day / 210 minutes per week
Dressing	Level D	20 minutes per day / 140 minutes per week
Placement of a splint or brace.		10 minutes per day, 3 times per week = 30 minutes per week
Grooming	Level E 2x per day	30 minutes per day / 210 minutes per day
Eating	Level B 2x per day	Zero minutes per day
Mobility	Level A	Zero minutes per day
Toileting	Level D 5x per day	50 minutes per day / 350 minutes per week
Transferring	Level A	Zero minutes per day
Medically Oriented Task – Complex positioning	NA	Zero minutes per day
Total before Incidental Tasks		940 minutes per week
Incidental Tasks = ¼ of total ADL time		235 minutes per week
Time for Behaviors = ¼ of total ADL time		235 minutes per week
Total PCW time		1410 minutes per week = 23.5 hours per week = 94 units per week.

(Exhibit 4, pgs. 16-21)

OIG indicated that the initial reviewer erred in allowing 106 units / 26.5 hours per week of services, but that it would not further modify the request for services.

Bathing, Dressing and Grooming

Petitioner's mother did not contest the amount of time allowed for bathing, dressing, placing the Petitioner's brace or for grooming.

Eating

Petitioner's mother indicated that the Petitioner needs assistance with eating, because she needs her meal set up for her. Petitioner's mother indicated that she will put too much food in her mouth at one time and must be cued to take appropriate bites. Petitioner's mother also indicated that the Petitioner drools excessively and chews with her mouth open, and so must have her face wiped intermittently throughout the meal, however Petitioner does not use a bib.

Medicaid does not cover PCW assistance when the only assistance needed is verbal cuing to eat, or eat appropriate portions. (See PCST Instructions, page 7; Exhibit 3, attachment 7)

Some consideration was given to whether Petitioner's level of assistance should have been at level C. According to the PCST instructions, an individual is at level C for assistance with eating when, "Member is able to feed him- or herself, but requires physical assistance with meal setup. (Assistance with eating does not include cutting, spreading, and stirring foods. Activities such as cutting, spreading, and stirring foods are included with meal preparation.)" Examples of assistance at level C that are given in the instructions were 1) Member needs assistance to set up adaptive utensils or 2) Member needs assistance with placing removing a protective bib.

There is no indication in the record that the Petitioner uses adaptive equipment or wears a bib. As such, it is found that Petitioner's assistance level was correctly determined to be at level B: Member is able to feed him- or herself, but requires the presence of another person intermittently for supervision or cueing, meaning the member is able to feed him- or herself, but requires occasional cueing to keep on task; Member needs to be reminded to use portion control, as well as what types of food are appropriate for a special diet; or Member needs to be reminded to eat.

Again, as indicated above, Medicaid does not cover PCW assistance for individuals whose needs are at level B. So, DHS correctly disallowed PCW assistance with eating.

Mobility

With regard to mobility, the Petitioner's mother agreed that the Petitioner can safely move about her home when she is moving on a level surface. However, Petitioner's mother testified that Petitioner needs assistance with mobility when going up and down stairs in her home. Petitioner's mother testified that Petitioner is unsteady on stairs and that she requires hands on assistance to make sure she does not fall. Given that Petitioner's knee has been dislocated and she needs a brace, the testimony of Petitioner's mother credible.

The PCST instructions indicate that an individual needs assistance at level C, when she can move about by him- or herself, but requires the *constant* presence of a PCW to provide immediate physical intervention during the task. There is no indication that the Petitioner needs constant supervision for the task of mobility, only that she intermittently needs assistance and only when on the stairs.

Under the current circumstances, Petitioner's assistance level would be at level B, and Medicaid does not cover PCW assistance for individuals at that level. (See Exhibit 2, attachment 7)

The Petitioner is noted to be receiving physical therapy services. Petitioner's mother might wish to have the physical therapist complete an assessment to determine whether the Petitioner needs constant supervision and human intervention for the task of mobility. If that is the case, Petitioner's provider can submit an amendment to the prior authorization request, along with a physician order and the physical therapy assessment.

Toileting

The Petitioner's mother indicated that she agreed with the 50 minutes per day / 350 minutes per week allowed for assistance with toileting. However, Petitioner's mother indicated that the Petitioner also has issues with incontinence and needs assistance with getting cleaned up and changed when she does not make it to the bathroom on time.

According to page 1 of the PCST instructions, the prior authorization request is limited by what is ordered by a physician in the plan of care. This instruction is based upon Wis. Admin. Code §DHS 107.112(1)(a) which states that personal care services, "shall be provided upon written orders of a physician...according to a written plan of care". In addition, Wis. Admin. Code §DHS 107.112(4)(c) specifically lists "Personal care services not documented in the plan of care" as a non-covered service.

The physician’s order, in the Home Health Certification and Plan of Care submitted by [REDACTED] contains no order for PCW services related to incontinence care. As such, DHS correctly denied PCW time for assistance with incontinence care.

If Petitioner would like additional PCW assistance with incontinence care, she must have her provider correct the PCST, obtain a physician order for the assistance and submit an amended prior authorization request for those additional services.

Transfers

Petitioner’s mother agreed that Petitioner is able to transfer herself from a bed or chair safely. As such, DHS correctly denied time for PCW assistance with this task.

Medically Oriented Tasks

Under Medically Oriented Tasks (MOTs), the PCST indicated that the Petitioner has no medications. Petitioner’s mother indicated that this was incorrect and that Petitioner needs assistance with administering Naproxen and Zolfran approximately twice per day, two days per week. However, the physician’s order, in the Home Health Certification and Plan of Care submitted by [REDACTED], contains no order for PCW services related to MOTs. As such, DHS correctly denied PCW time for medically oriented tasks.

Again, the Petitioner can ask her provider to correct the PCST, obtain a physician order for the assistance and submit an amended prior authorization request for those additional services. In the alternative, the Petitioner may also use the additional 24 hours per year of PCW assistance to be used as needed, to cover those times when she needs to take her medication.

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	140 minutes per week
3. Brace placement	30 minutes per week
4. Grooming	210 minutes per week
5. Eating	zero minutes per week
6. Mobility	zero minutes per week
7. Toileting	350 minutes per week
8. Transfers	zero minutes per week
9. MOTs	zero minutes per week

	940 minutes per week

Incidental Tasks

The PCST indicated that the Petitioner lives with her family. 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 940 minutes is 235 minutes.

Behaviors

Per the on-line Provider Handbook, topic 4621, time equal to ¼ of the time it actually takes to complete Activities of Daily Living (ADLs) may be allocated when there are behaviors that interfere with the provision of personal care services. In this case, that would be an additional 235 minutes per week.

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

940 minutes per week for ALDs
 +235 minutes per week for incidental activities
 +235 minutes per week for behaviors

 1410 minutes per week

1410 minutes ÷ 15 minutes per unit = 94 units per week
 94 units per week = 23.5 hours per week of personal care services.

Consequently, DHS was correct to modify the request for services down from the 170 units / 42.5 hours per week that [REDACTED] originally requested. However, DHS approved 106 units / 26.5 hours per week of PCW services, but is not seeking any additional reduction in PCW services at this time.

CONCLUSIONS OF LAW

DHS was correct to modify a request from [REDACTED] to provide personal care worker (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 19th day of September, 2016

\s _____
Mayumi M. Ishii
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 September 19, 2016.

Division of Health Care Access and Accountability