

3. On May 19, 2016 petitioner's provider submitted a request for prior authorization of PCW hours based upon the aforementioned PCST. Specifically, the petitioner's PCST provided requested 26.25 PCW hours per week for 53 weeks. The provider requested an additional 7 hours of travel time per week. This was at a cost of \$34,363.88.
4. On June 16, 2016 the Department notified petitioner in writing that is approved 17.5 hours per week of PCW time plus 7 hours per week of PCW travel time.
5. The petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 8, 2016.
6. The petitioner lives with family.
7. The petitioner has diagnoses of difficult in walking and chronic pain. She is 52 years old.

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)

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 requested 26.25 hours per week of PCW time. They further requested an additional 7 hours per week of PCW travel time. The Department approved 17.5 hours per week of PCW services plus the 7 hours of travel time. At the hearing petitioner requested 26.25 hours of PCW time plus the 7 hours of PCW travel time each week.

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: <https://www.forwardhealth.wi.gov/WIPortal>, under topic number 3165. 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.

Here the petitioner is a 52-year-old woman who lives with family. She is diagnosed with difficulty walking and chronic pain. She uses a shower chair and a cane for ambulation. Her daughter states that she also uses a walker. For toileting she has and uses grab bars and a raised toilet seat.

It is petitioner's burden to establish the necessity of the requested time. The Department reduced the requested PCW time in the area of bathing, dressing, grooming, toileting, and range of motion. With respect to bathing the petitioner requested an additional 25 minutes per day beyond the generally allowable 30 minutes per day on the time allocation table. At the hearing the petitioner's daughter stated that it took her 35 to 40 minutes to bath the petitioner. This is 15 to 20 minutes less than the time requested by the petitioner's provider. In addition, the bulk of this time was requested to help get the petitioner in and out of the tub. Given the petitioner's diagnosis, the fact that she has a shower chair, and the inconsistency between the PCST and the daughter/PCW worker's testimony, the Department's reduction was correct.

With respect to dressing, the Department reduced the time because one episode of dressing is included in bathing. This is correct. The petitioner's daughter vaguely described what she did dressing the petitioner, but failed to quantify that time. The Department's reduction in this area is correct.

With respect to grooming the petitioner's provider requested additional time to wash the petitioner's hair. Hair washing is included in the area of bathing. At the hearing the petitioner's daughter and PCW stated that she combs her mother's hair, cleans her nails, and applies lotion every other day. The time was not quantified. 20 minutes per day, which is what the Department allowed, is correct. This is the time generally allowed per the time allocation table.

With respect to toileting the Department did not allow any time. The petitioner's daughter stated that she must help her mother on and off the toilet. The petitioner has a walker, grab bars, and raised toilet seat. She is diagnosed with difficulty walking and chronic pain. The daughter did not provide specific explanation of what she had to do to get her mother and off the toilet. Given the diagnosis and the medical equipment, the Department's reduction in this area was correct.

With respect to range of motion, the petitioner's daughter stated that she had to bend her mother's leg after a leg surgery. The petitioner's daughter stated that the petitioner had her femur removed. The medical records do not support this. Perhaps there was a rod removed or inserted, however, there are no medical records showing that and showing the need for range of motion exercises. The PCST only states that these exercises to reduce pain and increase strength and flexibility. Given the documentation provided, the Department's reduction in this area is correct.

More generally the petitioner's daughter testified that since her brother, the petitioner's son died, the petitioner has been more depressed and that she must keep an eye on the petitioner. She has to be there all the time and feels that she needs her hours. There are specific hours awarded based on the ADLs that a person needs assistance with. There is additional incidental time awarded based on the total ADL time. The Department allowed for this time. Even if the petitioner is depressed, time is not covered to watch and keep an eye on her. The burden is on the petitioner to show that the time approved by the Department is incorrect. The Department's analysis of the petitioner's needs is the most thorough and credible determination in the record.

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.

CONCLUSIONS OF LAW

The agency correctly reduced the petitioner's prior authorization 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 6th day of September, 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 September 6, 2016.

Division of Health Care Access and Accountability