



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/149076

PRELIMINARY RECITALS

Pursuant to a petition filed April 25, 2013, 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 in regard to Medical Assistance, a hearing was held on May 16, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Division of Health Care Access and Accountability correctly denied Petitioner's request for personal care service hours.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: OIG by letter

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner is 70 years old, lives alone, and has been diagnosed with asthma, arthritis in most joints-but most significantly in her back and wrists, carpal tunnel syndrome, depression and

schizophrenia. Petitioner also had a right knee replacement in September 2012 that has reduced her mobility. (Testimony of Petitioner's nurse manager, Joan Campbell; Exhibit 4, pg. 17)

3. Petitioner has previously received personal care services. Between 2011 and 2012, Petitioner received 4.5 hours of services per day /31.5 hours per week. Between 2012 and 2013, Petitioner received 3.5 hours of services per day/24.5 hours per week. (Testimony of Ms. Campbell)
4. On March 4, 2013, Petitioner's personal care service provider, Independence First, submitted on Petitioner's behalf, a request for prior authorization seeking 4.5 hours/31.5 hours per week of personal care services, 7 hours per week of travel time for the personal care worker (PCW) and an additional 24 hours of services to be used as needed throughout the year, at a cost of \$40,257.75. (Exhibit 2, pg. 5)
5. On April 2, 2013, the DHCAA sent Petitioner a letter indicating that the request for services was denied. (Exhibit 2, pgs. 25-28)
6. On April 2, 2013, the DHCAA sent Independence First a notice indicating that it approved the 7 hours per week of travel time for the PCW and 24 hours per year of services to be used as needed. However, the DHCAA also indicated that it reduced the requested personal care service hours to 18.75 hours per week. (Exhibit 2, pgs. 29-30)
7. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 25, 2013.

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.

Petitioner requested 40 hours per week (8 hours per day, five days a week) of personal care service hours. The DHCAA approved 35 hours per week.

In determining how many hours of personal care services an individual is allowed, a service provider, in this case Ms. Campbell, 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. This chart can also be found at the aforementioned website. A copy of the table was also attached to the OIG letter, Exhibit 3.

The Personal Care Activity Time Allocation Table is a guideline showing the maximum allowable time for each activity.

According to the OIG letter, the DHCAA allotted the maximum time allowable on the Personal Care Activity Time Allocation Table for the following activities:

- | | |
|--|----------------------|
| 1. Bathing: 30 minutes per day x 7 days | 210 minutes per week |
| 2. Dressing: 20 minutes per day x 7 days | 140 minutes per week |
| 3. Grooming: 30 minutes per day x 7 days | 210 minutes per week |

No time was allocated for eating. This is consistent with the PCST which indicates that Petitioner is able to feed herself without assistance or adaptive device.

No time was allocated for mobility. This is consistent with the PCST which indicates that Petitioner is able to move about by herself with only intermittent supervision or cuing.

With regard to toileting, DHCAA allocated the following:

- | | |
|--|----------------------|
| Toileting: 10 minutes per day x 7 days | 70 minutes per week |
| Incontinence care: 30 minutes per day x 7 days | 210 minutes per week |

The PCST indicates that Petitioner needs help to use the toilet or change a personal hygiene product once a day and that she needs assistance with incontinence care twice a day. The Personal Care Activity Time Allocation Table allows for 10 minutes per toileting episode and 15 minutes per episode of incontinence care. So, the DHCAA allocations were correct in this respect and Petitioner's nurse did not assert that additional time was needed for those tasks. However, the PCST also indicated that Petitioner needs additional time for cleansing and changing after she has had a bowel movement. Therefore, it is found that 15 minutes a day or 105 minutes per week for such activity is medically necessary and allowable.

For transfers, the DHCAA did not allow any time. This is consistent with the PCST which indicated that Petitioner is able to transfer herself with only intermittent supervision or cueing.

With regard to Medically Oriented Tasks (MOTs), the PCST indicated that Petitioner needs Range of Motion (ROM) exercises twice a day for 15 minutes to prevent contractures, promote circulation and comfort. The DHCAA did not allow time for this, asserting that Petitioner would get sufficient maintenance of her range of motion by engaging in her activities of daily living. However, the record supports the medical necessity for ROM exercises as requested.

First, the physician's order contained on page 18 of Exhibit 2 and on page 4 of Exhibit 4, states a need for the exercises. Second, Petitioner has arthritis in all joints and has had knee replacement surgery and it is relatively common knowledge that the "use it or lose it" proposition is particularly true for arthritis sufferers. Based upon the foregoing, it is appropriate to approve ROM twice a day for 15 minutes.

Per the on-line Provider Handbook, topic 3167, time equal to 1/3 of the time it actually takes to complete Activities of Daily Living (ADLs) and Medically Oriented Tasks (MOTs) may be allocated for incidental cares, such as light meal preparation, incidental laundry, or light cleaning after bathing, grooming, or toileting Petitioner. The DHCAA allowed for this time, although some adjustment needs to occur, given the aforementioned additions to Petitioner's personal care service hours.

The actual time needed to complete Petitioner's ADLs and MOTs is as follows:

- | | |
|---|----------------------|
| 1. Bathing: 30 minutes per day x 7 days | 210 minutes per week |
|---|----------------------|

2. Dressing: 20 minutes per day x 7 days	140 minutes per week
3. Grooming: 30 minutes per day x 7 days	210 minutes per week
4. Toileting: 55 minutes per day x 7 days	385 minutes per week
5. ROM exercises: 30 minutes per day x 7 days	210 minutes per week

	1155 minutes per week.

One third of 1155 minutes is 385. So, Petitioner may receive an additional 385 minutes per week for incidental tasks.

At the hearing, Petitioner's nurse manager, Ms. Campbell, expressed concern that not enough time was being allocated to allow for times when Petitioner is resistant to assistance due to her schizophrenia and arthritis pain. Ms. Campbell also expressed concerns that sufficient consideration was not given to the fact that Petitioner is moving much more slowly due to pain and stiffness caused by her arthritis and her knee surgery.

Generally speaking, DHCAA frowns on allowing additional personal care services just because a patient is slow and the guidelines contained in the provider handbook do not allow for such time. However, it appears Ms. Campbell erred when completing the PCST, because she did not mark the box concerning behaviors, even though Petitioner is sometimes resistant to services because of her schizophrenia and because of her arthritis pain.

Per the on-line Provider Handbook, topic 3165, time equal to ¼ of the time it actually takes to complete Activities of Daily Living (ADLs) and Medically Oriented Tasks (MOTs) may be allocated when there are behaviors that interfere with the provision of personal care services. In this case, one fourth of 1155 minutes would be 288.75 minutes.

Totaling all of the time allowable for Petitioner we have:

1155 minutes per week for ALDs and MOTs
385 minutes per week for incidental activities
288.75 minutes per week for behaviors that interfere with services

1828.75 minutes per week ÷ 60 = 30.48 hours, rounded up to 31 hours per week of personal care

I note to the petitioner that her provider, Independence First will not receive a copy of this Decision. In order to have the requested personal care service hours approved, the petitioner must provide a copy of this Decision to Independence First, who must then submit a *new* prior authorization request to receive the approved coverage.

CONCLUSIONS OF LAW

The DHCAA did not correctly modify Petitioner's request for personal care service hours.

THEREFORE, it is

ORDERED

That Independence First submit a claim and new prior authorization request, together with a copy of this decision, to Forward Health for payment of 31 hours of personal care service hours per week for 53 weeks, along with 7 hours per week of travel time for the PCW and 24 hours of additional services to be used as needed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 23rd day of May, 2013.

\sMayumi 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 May 23, 2013.

Division of Health Care Access And Accountability