



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

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In the Matter of

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

DECISION

MPA/149247

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 06, 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, now known as the Office of the Inspector General (OIG), in regard to Medical Assistance (MA), a telephonic hearing was held on June 20, 2013, at West Bend, Wisconsin. The record was held open to allow the OIG an opportunity to review additional information submitted by the petitioner for the hearing. The OIG provided its response on June 30, 2013 indicating it would not change its original decision to deny the prior authorization amendment request.

The issue for determination is whether the OIG correctly denied the personal care worker (PCW) hours for petitioner pursuant to her prior authorization (PA) amendment request.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

Respondent:

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

By written submittals of: Kelly Townsend, RN  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner is a resident of Washington County. . She is 82 years old and certified for MA.
2. Petitioner lives with her family and does not regularly attend activities outside of her home. She is diagnosed with malignant neoplasm of the kidney, secondary malignant neoplasm of the lung; symptoms involving the head/neck and nonspecific cerebrovascular disease.
3. Petitioner was awarded 140 units/35 hours of PCW weekly pursuant to a PA request (# [REDACTED]) made on October 18, 2013.
4. On March 19, 2013 a PA Amendment Request was filed with the OIG requesting an increase in PCW hours previously awarded for PA # [REDACTED]. The provider requested an increase to 168 units/42 hours weekly.
5. On March 8, 2013 a Personal Care Screening Tool (PCST) was conducted by a nurse from Independence First (IF) for petitioner. The amount of time allocated under the PCST was 91 units (22.75 hours) per week. That PCST showed that:
  - a. For bathing, she requires total physical assistance of another.
  - b. She requires partial assistance with dressing her upper body and total assistance with dressing her lower body once daily.
  - c. She requires partial assistance with grooming once daily.
  - d. She feeds herself.
  - e. For mobility its states that she needs the physical help of another.
  - f. She needs physical help from another person for toileting/changing personal hygiene product 4 times daily.
  - g. For transfers, it states that she needs the physical help of another, but can participate.
  - h. For medication management, petitioner was found to need reminders three times daily.
  - i. No behaviors or medical conditions were noted as interfering with the PCW's assistance with cares.
  - j. IF also requested additional time for services incidental to task.
6. By a notice dated April 18, 2013, the OIG denied the amended PA request.

### DISCUSSION

MA coverage of PCW services is described in the Wis. Adm. Code, §DHS 107.112. Covered services are specified in subsection (1), and are defined generally 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." Examples of covered services are assistance with bathing, with getting in and out of bed, with mobility and ambulating, with dressing and undressing, and meal preparation. In determining the number of PCW hours to authorize the OIG uses that standard along with the general medical necessity standard found at Wis. Adm. Code, §DHS 101.03(96m). It provides:

“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. Admin. Code, §DHS 101.03(96m).

To determine the number of PCW hours to authorize the OIG uses the Personal Care Screening Tool, a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The screening tool allots a specific amount of time in each area the recipient requires help, which the OIG's reviewer can then adjust to account for variables missing from the screening tool's calculations.

The OIG denied the PA Amendment because it determined that the documentation submitted with it did not support the medical necessity of the increase in hours requested. In reviewing the information submitted by the provider, I can see how the OIG was unable to determine that the PCW services were medically necessary, and technically I am reviewing the OIG's determination. The option was given to the petitioner's representative at hearing to provide further documentation of the petitioner's conditions, diagnoses, etc. after the hearing, which occurred, and as stated above was also reviewed by the OIG.

The petitioner was represented at hearing by her daughter/caregiver who clearly wants the best for her mother. She described her mother's conditions/abilities are largely affected by her decline in her disease progression. She testified to her mother's incontinence, and need for glucometer readings, complex positioning, and range of motion. Post-hearing, another PCST was done for petitioner, and those results were also submitted back to the OIG for reconsideration. The problem relates to the fact that the medical necessity of those cares is not documented pursuant to MA rules and policy, which provide:

**(3) OTHER LIMITATIONS.**

**(a)** Personal care services shall be performed under the supervision of a registered nurse by a personal care worker who meets the requirements of s. [DHS 105.17 \(3\)](#) and who is employed by or is under contract to a provider certified under s. [DHS 105.17](#).

**(b)** Services shall be performed according to a written plan of care for the recipient developed by a registered nurse for purposes of providing necessary and appropriate services, allowing appropriate assignment of a personal care worker and setting standards for personal care activities, giving full consideration to the recipient's preferences for service arrangements and choice of personal care workers. The plan shall be based on the registered nurse's visit to the recipient's home and shall include:

1. Review and interpretation of the physician's orders;
2. Frequency and anticipated duration of service;

3. Evaluation of the recipient's needs and preferences; and
  4. Assessment of the recipient's social and physical environment, including family involvement, living conditions, the recipient's level of functioning and any pertinent cultural factors such as language.
- (c) Review of the plan of care, evaluation of the recipient's condition and supervisory review of the personal care worker shall be made by a registered nurse at least every 60 days. The review shall include a visit to the recipient's home, review of the personal care worker's daily written record and discussion with the physician of any necessary changes in the plan of care.

See Wis. Adm. Code §DHS 107.112(3)(a)-(c).

In sum, there are no physician orders to support the medically oriented tasks and no medical documentation supports the changes identified in the PCSTs submitted for and after the hearing. I therefore must conclude that the OIG was correct in its denial of the PA Amendment request. As in all prior authorization request cases, the petitioner bears the burden of proving the services she requests are necessary, and that has not been done. IF may be able to file another amendment to the prior authorization request correcting the problems and explaining more fully the need for the hours. I suggest that the petitioner, her provider, and the medical specialists she sees review her PCW needs and that they provide increased documentation to support a new request for additional ongoing PCW time, including physician orders for same.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### **CONCLUSIONS OF LAW**

The OIG correctly denied petitioner's request for additional PCW hours as the preponderance of the evidence submitted did not show the medical necessity of the services.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be dismissed.

### **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 12th day of August, 2013

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\sKelly Cochrane  
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 August 12, 2013.

Division of Health Care Access And Accountability