



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

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In the Matter of

██████ P. ██████  
c/o ██████  
██████  
██████

DECISION

MPA/150290

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 24, 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 August 19, 2013, at Eagle River, Wisconsin.

The issue for determination is whether the Department erred in its modification P.A. # ██████ for PCW services.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

██████ P. ██████  
c/o ██████  
██████  
██████

Petitioner's Representative:

████████████████████  
████████████████████  
████████████████████

Respondent:

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

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Vilas County, Wisconsin.

2. Petitioner has mild mental retardation, microcephalus, seizure disorder, hyperactivity, and speech delay (he can be very difficult to understand and gets frustrated); he requires total assistance with bathing, grooming, and medication; he requires partial assistance with dressing (upper & lower body), eating, and toileting; he can be very slow and resistive to cares and this causes cares to take much longer than they would otherwise.
3. On May 14, 2013 petitioner's provider, The Human Service Center of Rhinelander, Wisconsin, Wisconsin, filed P.A. # [REDACTED] dated May 14, 2013 with OIG requesting 126 units (31.5 hours) per week of PCW services and 96 units (24 hours) per year of PCW services PRN ["Pro Re Nata" or "as needed"] at a total cost of \$20,187.00.
4. OIG modified the P.A. by approving 77 units (19.25 hours) per week of PCW instead of the 31.5 hours per week that was requested; OIG also approved the 96 units (24 hours) per year of PCW services PRN that were requested.
5. Petitioner's provider, The Human Service Center of Rhinelander, Wisconsin, Wisconsin, filed P.A. # [REDACTED] dated May 31, 2007 with OIG<sup>1</sup> requesting 126 units (31.5 hours) per week of PCW services and 96 units (24 hours) per year of PCW services PRN (to accompany petitioner to medical appointments) at a total cost of \$20,661.00; OIG modified P.A. # [REDACTED] by approving 25.25 hours per week of PCW instead of the 31.5 hours per week that was requested; OIG also approved the 96 units (24 hours) per year of PCW services PRN that were requested; petitioner requested a Hearing; at the time of the Hearing on August 28, 2007 OIG agreed to approve the original request of 126 units (31.5 hours) per week. See, DHA Case No. MPA-63/85919 (Wis. Div. Hearings & Appeals September 4, 2007) (DHS<sup>2</sup>).
6. In 2009 petitioner's provider filed a PA request with OIG requesting 126 units (31.5 hours) per week of PCW services and 96 units (24 hours) per year of PCW services PRN; OIG modified that PA request by approving less PCW hours per week than was requested; petitioner requested a Hearing and a Hearing was scheduled for July 24, 2009; prior to a Hearing being held OIG agreed to approve the original PA request [including 126 units (31.5 hours) per week of PCW services]. See, DHA Case No. MPA-63/105321 (Wis. Div. Hearings & Appeals 2009) (DHS).

### 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. The Code also provides that, "No more than one-third of the time spent by a personal care worker may be in performing housekeeping activities." Wis. Adm. Code, §DHS 107.112(3)(e).

In determining the number of PCW hours to authorize, the OIG uses the standard above along with the general medical necessity standard found at Wis. Adm. Code, §DHS 101.03(96m). Essentially the medical necessity standard requires a service to be basic and necessary for treatment of an illness, not necessarily the best service possible, and not just for convenience. To determine the number of PCW hours to authorize the OIG uses the Personal Care Screening Tool (PCST), a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The PCST 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.

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<sup>1</sup> OIG was previously known as the Division of Health Care Financing ["DHCF"].

<sup>2</sup> DHS was previously known as the Department of Health and Family Services ["DHFS"].

The Department did not allow any time for eating assistance. The Department explains that petitioner does not need assistance with eating and only needs help with preparation. The record indicates that petitioner requires constant prompting and instruction on cutting his food and to continue the process of eating. The record reflects that petitioner will wander off or otherwise cease the act of active consumption of his food. I have little doubt based on the testimony of the caregivers and the provider that petitioner requires active assistance with eating. In exhibit #1, David Kramer of the Human Service Center indicates that it takes petitioner approximately 30 minutes to eat. At three meals per day this amounts to 10.5 hours per week. I find such time appropriate under these facts.

The Department notes that it did allow an additional 193 minutes per week for incidental tasks and another 193 minutes to accommodate delays for behaviors. I point this out because the primary argument of petitioner was that it takes longer to complete tasks because of these behaviors. The 77 hours allowed by the Department includes such additional time already. I find the remainder of the Department rationale and time calculations appropriate.

**I note to the petitioner that his provider will not receive a copy of this Decision. In order to have the claim approved, the petitioner must provide a copy of this Decision to the provider. The provider must then submit a billing statement with a copy of this Decision to receive the approved additional 10.5 hours per week of PCW coverage.**

### CONCLUSIONS OF LAW

The Division incorrectly modified the petitioner's MA prior authorization request for PCW services because petitioner established the appropriateness, and medical necessity of PCW time for eating assistance at a level of 10.5 hours per week.

**THEREFORE, it is**

### ORDERED

That the petitioner's provider, Human Service Center, is authorized to provide to the petitioner an **additional 42 units (10.5 hours) per week** of PCW services above what the Department has already approved in the modified PA approval. Thus, the total approved time is 119 units per week for 53 weeks as originally requested. In order to obtain the PCW hours petitioner must have The Human Service Center of Rhinelander, Wisconsin submit a claim and new Prior Authorization ["PA"] request, together with a copy of this *Decision*, to ForwardHealth for payment.

### **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 Madison,  
Wisconsin, this 10th day of September, 2013

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\sJohn P. Tedesco  
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 10, 2013.

Division of Health Care Access And Accountability  
[DK@thehumanservicecenter.org](mailto:DK@thehumanservicecenter.org)