



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

MPA/150731

PRELIMINARY RECITALS

Pursuant to a petition filed July 17, 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 14, 2013, at Milwaukee, Wisconsin.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

Respondent:

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

By: OIG by letter authored by Sharon Bailey, 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:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. Petitioner is a 13 year-old boy with diagnoses of epilepsy, turrett's syndrome, bi-lateral cataracts, sensory integration dysfunction, anxiety disorder, bi-polar disorder, obesity, ureases and a congenital

- condition resulting in a disproportionately large head. (Testimony of Petitioner's mother, Exhibit 3, pg. 19)
3. Petitioner is 5'9" tall and weighs 236 pounds. (Testimony of Petitioner's mother)
 4. Petitioner attends programming/school during the day. (Testimony of Petitioner's mother)
 5. Petitioner is very rigid in his routines and will have melt downs or shut down, if his routine is disturbed. (Testimony of Petitioner's mother; Exhibit 3 pg. 18 – physician's order)
 6. Petitioner needs reminders to stay on task and specific, step-by step cueing/directions. During meals, Petitioner will get up and try to wander. (Testimony of Petitioner's mother; Exhibit 3, pg. 18)
 7. Petitioner needs additional time for dressing assistance, because he will remove clothes that have already been put on. (Testimony of Petitioner's mother)
 8. Petitioner needs additional time for bathing, because he takes one partial bath and one full bath per day due to the frequency of his incontinence. (Testimony of Petitioner's mother)
 9. On May 31, 2013, Independence First submitted, on Petitioner's behalf, a request for prior authorization of PCW service hours, 35 hours per week for 53 weeks at a cost of \$36,172.50. Independence First also requested authorization for travel time for the PCW, 7 hours per week for 53 weeks at a cost of \$7,234.50. (Exhibit 2, pg. 7)
 10. On June 26, 2013, DHCAA sent notices to Petitioner and to Independence First, indicating that it approved the travel time for the PCW, but modified the request for PCW services. DHCAA approved 19.25 hours per week for 53 weeks. (Exhibit 3, pgs. 24-29)
 11. Petitioner's mother filed a request for fair hearing on behalf of Petitioner that was received by the Division of Hearings and Appeals on July 14, 2013. (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.

Petitioner requested 35 hours per week (7 hours per day, five days a week) of personal care service hours. The DHCAA approved 19.25 hours per 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. This chart can also be found at the aforementioned website. A copy of the table was also attached to the OIG letter, Exhibit 2, pg.19.

The Personal Care Activity Time Allocation Table is a guideline showing the maximum allowable time for each activity, but more time may be approved, if circumstances warrant a deviation from the table and proper documentation/justification is provided. *On-Line Provider Handbook Topic #3165.*

The OIG letter did not specifically explain how much time was allocated for each task and why, but it appears 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: 40 minutes per day x 7 days	280 minutes per week
3. Grooming: 30 minutes per day x 7 days	210 minutes per week
4. Toileting: 10 minutes per day x 7 days	70 minutes per week
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Total:	770 minutes

With regard to bathing, the DHCAA did not allow sufficient time. It is unclear from the OIG letter, whether the DHCAA took into consideration information in the Personal Care Addendum (Exhibit 3, pg. 19), indicating that Petitioner's ADLs take 2 hours in the morning and 3 hours in the evening, and that even in that time, grooming may not be completed due to Petitioner's sensory integration deficits.

Petitioner's mother testified credibly that Petitioner needs additional time for bathing because he takes a partial bath in the morning, due to overnight incontinence, and he takes a full bath in the evening, because he has frequent episodes of incontinence throughout the day, when he is at school or in his day program. Petitioner's mother testified that bathing can take an hour or more, because Petitioner tries to bathe himself, but needs constant cueing, direction and re-direction and he needs to follow a very rigid routine. Petitioner's mother indicated that Petitioner will either tantrum or shut down and refuse to complete the task, if he is rushed or if his routine changes. The testimony of Petitioner's mother is corroborated by the physician's order and the Personal Care Addendum. (Exhibit 3, pg. 19)

It is the DHCAA policy that one episode of dressing is considered part of bathing. (*See* the Personal Care Activity Time Allocation Table, Exhibit 2, pg.19) Petitioner's mother also testified credibly that each episode of dressing takes more time, because Petitioner will remove clothing, immediately after it has been donned and will need to be redressed. In addition, Petitioner's mother indicates that Petitioner sometimes tries to wander.

I note that according to the PCST, Petitioner, in addition to having behaviors that interfere with his receipt of PCW services, also "has a sensory processing disorder. Code 374.44. PCW is to manage the balance of his sensory needs, either knowing how to eliminate stimulation to de-escalate agitation or how to increase stimulation to prevent escalation." (Exhibit 2, pg. 12)

Based upon all of the foregoing, it is found that it is appropriate to allow 90 minutes per day for bathing, 30 minutes for the partial bath and 60 minutes for a full bath.

With regard to toileting, the OIG letter offers no explanation for why DHCAA deviated from the PCST, which indicates Petitioner's assistance level is "E", and that he needs assistance with urinary incontinence at least twice a day, seven days a week. Cross referencing this with the Personal Care Activity Time Allocation Table would result in an allocation of at least 30 minutes per day or 210 minutes per week.

The PCST also indicates that Petitioner needs assistance with fecal incontinence at least once weekly, which according to the Personal Care Activity Time Allocation Table, would result in another 15 minutes per week. Petitioner's mother testified credibly that Petitioner has issues with constipation and that the medications he takes to address the constipation exacerbate the fecal incontinence.

Based upon the foregoing, it is appropriate to allow 225 minutes per week for toileting.

It should be noted that Independence First requested time for eating, which the DHCAA denied. Petitioner's mother testified that Petitioner is obese and has no self-control when eating. Petitioner's mother indicated that Petitioner needs to be reminded to stay on task and will wander during meals. The PCST does indicate that Petitioner needs "intermittent supervision and cueing" and that he needs assistance with meal prep and set up,

because he has no sense of moderation. However, the PCST also indicates that Petitioner is able to feed himself and the PCST does not note any documented choking risk. As such, Petitioner’s level of need, which the PCST noted to be level “B”, does not allow for time under the Personal Care Activity Time Allocation Table. (See Exhibit 2, pg.19) In addition, meal preparation and set-up are not included under eating, but time allocated for incidental tasks may be used for these purposes. (See the on-line provider handbook, topics 3167 and 11497) Based upon the foregoing, it is found that the DHCAA correctly denied time for eating.

Per the on-line Provider Handbook, topic 3167, additional time may be allocated for incidental cares, such as light meal preparation, incidental laundry, or light cleaning after bathing, grooming, or toileting Petitioner. For an individual who does not live alone, time equal to 1/4 of the time it actually takes to complete Activities of Daily Living (ADLs) and Medically Oriented Tasks (MOTs) may be allocated. 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: 90 minutes per day x 7 days	630 minutes per week
2. Dressing Upper body: 20 minutes per day x 7 days	140 minutes per week
3. Dressing Lower body: 20 minutes per day x 7 days	140 minutes per week
4. Grooming: 30 minutes per day x 7 days	210 minutes per week
5. Toileting: 30 minutes per day x 7 days + 15 minutes per week for fecal incontinence care	225 minutes per week

	1345 minutes per week

One fourth of 1345 minutes is 336.25 minutes. So, Petitioner may receive an additional 336.25 minutes per week for incidental tasks.

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) and Medically Oriented Tasks (MOTs) may be allocated when there are behaviors or medical conditions that interfere with the provision of personal care services. The DHCAA allowed for this time, but again adjustments must be made because additional time should have been allowed for ADLs. In this case, one fourth of 1345 minutes is 336.25 minutes.

Totaling all of the time allowable for Petitioner we have:

1345 minutes per week for ALDs
 336.25 minutes per week for incidental activities
 336.25 minutes per week for behaviors that interfere with services

 2017.50 minutes per week ÷ 60 = 33.625 hours, rounded up to 33.75 hours per week of personal care service hours

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

That the DHCAA did not correctly modify Petitioner’s request for PCW service hours.

THEREFORE, it is

ORDERED

That Petitioner's provider is authorized to bill the Wisconsin Medicaid program for 33.75 hours (135 units per week) of personal care services per week. Petitioner's provider should submit a copy of this decision to Forward Health, along with its invoice/request for prior authorization, for the additional time allowed herein.

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 3rd day of September, 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 September 3, 2013.

Division of Health Care Access And Accountability



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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