



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/151185

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 22, 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 October 24, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether DHS correctly modified Petitioner's request for Personal Care Worker (PCW) hours from 3 hours per day to 2.71 hours per day.

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 has been treated for breast cancer and suffers from Osteoarthritis in her hands, wrists and knees. Petitioner also suffers from malaise, fatigue, and muscle weakness. (Testimony of Petitioner; Exhibit 2, pg. 19; Exhibit 3, pgs. 8 and 18)
3. On June 11, 2013, Independence First submitted, on behalf of Petitioner, a request for authorization of 3 hours per week of Personal Care Worker (PCW) hours, with 7 hours per week travel time for the PCW, for 53 weeks, at a cost of \$28,938.00. (Exhibit 2, pg. 5)
4. On July 5, 2013, the Department of Health Services (DHS) sent Petitioner a noticed indicating that it modified the request for services. Also on July 5, 2013, DHS sent Independence First a notice, indicating the same. (Exhibit 2, pgs. 33-38)

### 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.”

“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.

Independence First, on behalf of Petitioner, requested 3 hours per week of Personal Care Worker (PCW) hours, with 7 hours per week travel time for the PCW. Petitioner, in her appeal letter, requested 5 hours of PCW services per week. According to the letter from the Department of Health Services, Office of the Inspector General, DHS approved 2.71 hours per day, with 7 hours per week of travel time for the PCW.

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, Independence First, 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, pg.22.

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 application of an ACE bandage, are also examined.

The Personal Care Activity Time Allocation Table is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165.*

The letter from the Office of the Inspector General, indicated that DHS 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, 2x per day, x 7 days	280 minutes per week
3. Back Brace: 10 minutes per day x 7 days	70 minutes per week
4. Grooming: 15 minutes per day, 2x per day x 7 days	210 minutes per week
5. ACE wrap for lymphedema 10 minute per day, 2x per day x 7 days	140 minutes per week
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Total:	910 minutes week

With regard to bathing, Independence First, in the Personal Care Screening Tool, indicated that Petitioner needs one hour for bathing. However, it did not clearly explain why Petitioner needs more than the maximum of 30 minutes that is usually granted. Consequently, it is found that DHS's allotment of 30 minutes per day for this task is appropriate.

With regard to dressing, it should be noted that one incident per day of dressing is normally included in the 30 minutes allowed for bathing. As such, DHS would usually approve only one, 20 minute incident of dressing upper and lower body per day. However, in this case, DHS allowed two, 20 minute incidents of dressing per day, in the event, Petitioner needs additional time to get dressed after bathing.

With regard to her back brace, Petitioner expressed some skepticism with regard to whether it was helping her, but she did not dispute the additional ten minutes per day allowed for getting the brace on.

With regard to grooming, Petitioner did not dispute the time allocated for this task.

With regard to eating, Petitioner did not dispute the fact that she is independent in this task and can feed herself. Petitioner indicated that she does need help with set up, but this time is included in the time allowed for incidental tasks. (*See* the on-line provider handbook, topics 3167 and 11497)

With regard to mobility, Petitioner indicated that she is able to move about her home safely. As such, DHS correctly disallowed time for this task.

With regard to toileting, Petitioner testified that she is able to toilet herself, but does occasionally need help when her stool becomes stuck and must be manually pulled out. Petitioner indicated that she takes a number of medications which cause severe constipation. However, Petitioner testified that she has recently begun taking a stool softener prescribed by her physician, which is helping her. Using a stool softer is more cost effective than paying a PCW to remove stool from Petitioner's bottom. As such, DHS correctly disallowed time for this task.

With regard to transfers, Petitioner indicated that she is able to transfer herself out of bed or from one piece of furniture to another, although it can be very painful. As such, it is found that DHS correctly disallowed time for this service.

With regard to Medically Oriented Tasks, Petitioner did not dispute the time needed to apply her ace bandage.

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 or grooming 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 which works out as follows:

The actual time needed to complete Petitioner’s ADLs and MOTs was 910 minutes. (See above) One fourth of 910 minutes is 227.50 minutes. So, Petitioner may receive an additional 227.50 minutes per week for incidental tasks.

Totaling all of the time allowable for Petitioner we have:

910 minutes per week for ALDs  
227.5 minutes per week for incidental activities

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1137.5 minutes per week ÷ 15 minutes = 75.83 units per week

75.83 units per week ÷ 7 days = 10.83 units per day or 2.71 hours per day.

DHS approved 76 units per week. As such, DHS correctly modified Petitioner’s request for services.

**Petitioner should note that if her condition changes, Independence First can always request additional PCW time on her behalf.**

**CONCLUSIONS OF LAW**

DHS correctly modified Petitioners request for PCW services to 76 units/2.71 hours per day.

**THEREFORE, it is ORDERED**

That the petition is 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 4th day of November, 2013.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 4, 2013.

Division of Health Care Access And Accountability