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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/151956

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 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 in regard to Medical Assistance, a hearing was held on November 05, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) 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. On July 11, 2013, Advocate Home Health Care submitted, on behalf of Petitioner, a request for authorization of 31 hours of personal care worker (PCW) services per week for 53 weeks at a cost of \$26,632.50. (Exhibit 3, attachment 1)

3. On July 31, 2013, the Department of Health Services (DHS) sent Petitioner a notice indicating that the request for services had been denied. On July 31, 2013, DHS sent notice of the same to Advocate Home Health. (Exhibit 2, pgs. 61-67)
4. Petitioner filed a request for fair hearing that was received by the Division of Hearings and appeals on September 6, 2013. (Exhibit 1)
5. Petitioner suffers from Type II Diabetes, Fibromyalgia, gastroesophageal reflux, hypertension, knee pain, rheumatoid arthritis, narcolepsy, sleep apnea and restless leg syndrome. (Exhibit 2, pgs. 68 and 70)

### DISCUSSION

Personal Care Services are covered 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.

In determining how many hours of personal care services an individual is allowed, the service provider, in this case, Advocate Home Health Care, completes a personal care screening tool (PCST), which examines a patient's ability to perform activities of daily living in seven areas: bathing, dressing, grooming, eating, mobility, toileting and transferring. It also looks at a patient's need for assistance with medically oriented tasks.

A link to a blank PCST 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 from the handwritten PCST are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table. This can also be found at the aforementioned website. A copy of the table was also attached to the OIG letter, Exhibit 9.

The Personal Care Activity Time Allocation Table lists the maximum allowable time for each activity.

In this case, DHS denied Petitioner's request for services for two reasons. First, the paperwork submitted by the agency was not completed well. Second, Petitioner's medical records do not support the medical necessity for any services from a personal care worker.

With regard to the documentation submitted by Advocate Home Health Care, there are, indeed, some issues. First, the Home Health Certification and Plan of Care (Exhibit 3, attachment 3) lists the certification period as being one day, 07/03/13 to 07/03/13. Second, the Home Health Certification and Plan of Care contradicts the PCST. The Home Health Certification and Plan of Care states that Petitioner is able to, "walk/transfer self around the house" and only needs assistance "at times", but the PCST, states that Petitioner needs constant supervision with hands-on-assistance. (See Exhibit 3, Attachment 4) Third, the Home Health Certification and Plan of Care states that Petitioner is allowed to be "up as tolerated" but also states that she walks thirty minutes a day.

Given the foregoing inconsistencies, DHS correctly questioned the accuracy of the PCST and denied Petitioner's request for services.

With regard to Petitioner's medical records, it is found that DHS was correct in its determination that there is information that contradicts claims made in the PCST:

On January 21, 2013, Petitioner was seen by Dr. Klopstein and rated her back pain as a "7", but stated that her medications were working. Dr. Klopstein noted that Petitioner's gait was normal, but that she walked slowly. Dr. Klopstein advised Petitioner to start walking five minutes per day and increase walking time by 1 minute per week. (Exhibit 3, attachment 6)

On February 2, 2013, Petitioner was seen by Dr. Douglas J. Hempel. At that time, Dr. Hempel indicated that Petitioner had minimal "arthralgias" (joint pain). Dr. Hempel indicated that he examined 64 joints in all four extremities and that there was no "proliferative synovitis" (swelling) in any joint tested. The report further stated Petitioner had no synovitis in her wrists or her MCP and PIP joints (finger joints) and that she had good grips. Dr. Hempel noted that petitioner showed full range of motion without instability or deformity in her large joints and had not thickness in the joints in her toes. Dr. Hempel further stated, "Rheumatoid arthritis doing well, see no evidence of active aggressive disease." (Exhibit 3, attachment 7)

On February 6, 2013, Petitioner was seen by Dr. Shannon Muderlak, at which time Petitioner reported that her "pain" was "ok" and that she was trying to walk three times a week with her daughter. (Exhibit 3, attachment 8)

On April 22, 2013, Petitioner was seen again by Dr. Klopstein and reported that her medications are working for her and that she walks at least 30 minutes per day and would like to rejoin her water aerobics class. (Exhibit 3, attachment 9)

In particular, the reports from Dr. Hempel that Petitioner's arthritis is well controlled with no evidence of aggressive disease and Dr. Klopstein's report that Petitioner walks at least 30 minutes per day and feels well enough to join a water aerobics class undermines the claims in the PCST that Petitioner is unable to bathe herself, dress herself, move about her home without assistance or transfer herself from one surface to another due to pain issues. It should also be noted that the PCST states that Petitioner's legs give out on her, but the medical documentation makes no mention of this. Petitioner also asserted that she requires medication reminders because she becomes so groggy due to her sleep apnea and narcolepsy, but the aforementioned medical exams did not note any neurological or cognitive impairment. On the contrary, they regularly stated Petitioner was alert and oriented to person, place and time.

At the hearing, Petitioner testified that she did need assistance with her activities of daily living, primarily because of pain in her back and knees. Petitioner's daughter, who would be serving as her personal care worker, also testified that she feels her mother needs regular assistance with these tasks. I do not doubt that Petitioner suffers from pain in her back and knees. However, regrettably, the medical documentation does not support a finding that Petitioner's pain issues are so severe and uncontrollable that she requires the assistance of a personal care worker, at this time.

Petitioner should note that if her condition changes and it is noted by her physicians, she can always file another request for services through her home health care agency.

### **CONCLUSIONS OF LAW**

DHS correctly denied Petitioner's request for PCW services.

**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).

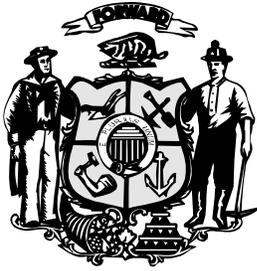
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson 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 6th 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**

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The preceding decision was sent to the following parties on November 6, 2013.

Division of Health Care Access And Accountability