



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

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In the Matter of

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/152680

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 10, 2013, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to modify a Medical Assistance (MA) authorization for personal care worker (PCW) services, a hearing was held on December 5, 2013, by telephone.

The issue for determination is whether the DHCAA can grant PCW hours to perform dialysis.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Written submission of Kelly Townsend, RN

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a 24-year-old resident of Vilas County who receives MA.
2. Petitioner has a number of medical conditions that require her to have assistance with activities of daily living. She had a kidney transplant that ultimately was unsuccessful, and she requires daily kidney dialysis.
3. Petitioner’s mother has been trained to do the dialysis at home. For approximately the past two years the dialysis has been included in PCW hours with petitioner’s mother the paid caregiver.

4. On July 30, 2013, The Human Service Center requested 35 hours per week PCW services with a start date of September 15, 2013, PA no. [REDACTED]. By a notice dated August 21, 2013, the DHCAA granted 8 hours per week. It denied the rest of the hours because they were used to perform the dialysis with the determination that MA could not pay for dialysis as a PCW task.

### DISCUSSION

Personal care services are “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.” Wis. Admin. Code §DHS 107.112(1)(a). Covered services include the following:

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;
12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

Wis. Admin. Code, §DHS 107.112(b). Importantly for this case, §DHS 107.112(4)(g) specifically lists as non-covered skilled nursing services including insertion and sterile irrigation of catheters and use of aseptic techniques.

The 8 hours per week that were granted were for activities such as assistance with bathing, medication, and wound care. Petitioner’s representatives agree that 8 hours per week is appropriate for those services. They also agree that the remainder of the requested hours are for dialysis.

The DHCAA denied the dialysis hours because dialysis is a skilled nursing service. It involves inserting needles using aseptic technique. As a result the MA program cannot pay a PCW to perform dialysis even if the person is trained to do so and has done so in the past.

I must uphold the denial of hours for dialysis. The administrative code cannot be clearer that nursing services cannot be approved as PCW services. This result does not mean that petitioner’s mother cannot do the dialysis for petitioner; it means only that the MA program cannot pay for the services.

The question was raised as to why the DHCAA denied that services now when they had been approved in the past. I cannot answer that question other than to point to my experience that the agency does not review every PA request as thoroughly as it would like because of sheer volume. In addition earlier PA requests might not have included as much information so that that they might not have been identified as involving nursing service techniques. While I cannot say for sure why earlier requests may have been approved, the issue before me is whether the DHCAA correctly denied services in *this instance*, and I must conclude that it did.

**CONCLUSIONS OF LAW**

The DHCAA correctly modified the PA request for PCW services to exclude hours in which the PCW was providing dialysis, which is a skilled nursing service and thus not allowed as a PCW service.

**THEREFORE, it is** **ORDERED**

That the petition for review herein be and the same is hereby 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, Room 651, 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 13th day of December, 2013

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\sBrian C. Schneider  
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 December 13, 2013.

Division of Health Care Access And Accountability