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

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In the Matter of

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

DECISION

MPA/152844

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 16, 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 (Division or DHCAA) in regard to Medical Assistance (MA), a hearing was held on November 20, 2013, by telephone.

The issue for determination is whether the Division correctly determined, pursuant to a prior authorization request, that the petitioner requires 7 hours weekly of personal care worker (PCW) services.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By written submission of Cindy Zander, 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:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County. She is certified for MA.

2. In July, 2013, a prior authorization request (#...191) was submitted on the petitioner's behalf for 28 hours weekly of PCW services, beginning August 20, 2013. On August 20, 2013, the Division issued written notice that it was "modifying" the amendment request by approving a decreased amount of PCW time of 7 hours weekly.
3. The Division's basis for service reduction was that the number of requested hours was not medically necessary. In particular, the Division concluded that the petitioner had only established a need for PCW help with bathing.
4. The petitioner, age 54, resides with her sister in the community. The petitioner has diagnoses of diabetes mellitus type II, COPD, hypertension, lumbago (back pain), lichen planus (skin disease, often from autoimmune process), lupus, overweight (BMI of 31), and "debility". She has functional limitations in the areas of endurance, ambulation (uses a cane or walker), and shortness of breath with exertion.

A state Personal Care Screening Tool (PCST) review was performed by a nurse practitioner for the petitioner on July 24, 2013. The result was a determination that 26.25 hours of PCW weekly care are needed. The PCST results declared that the petitioner required supervision with grooming, transfers, and toileting. She is independent with eating. The petitioner's behavior and medical condition does not make her care more time consuming than normal. She takes her medication independently. For bathing and dressing, the petitioner requires supervision and physical assistance for task completion.

5. The petitioner receives supportive home care services (housekeeping, meal preparation, assist to bed) in the evening through the IRIS program.
6. The petitioner attended a physician office visit on July 30, 2013, for an annual Medicare wellness appointment. The patient had recently experienced knee pain, which required an injection for relief. The physician indicated that the petitioner was in no acute distress, that she was able to perform activities of daily living, she was not a fall risk, that she had normal range of motion, and that she demonstrated normal coordination and gait.
7. The petitioner has a need for assistance with dressing/undressing and daily treatment of an open scalp wound (related to lupus) twice daily. The standard time allocation for the wound is five minutes each time (10 minutes daily).

### DISCUSSION

Personal care worker service (PCW), as defined at Wis. Admin. Code §DHS 107.112(1), is an MA-covered service, subject to prior authorization after the first 250 hours per calendar year. Wis. Admin. Code §DHS 107.112(2) (May 2009). In determining whether to approve such a service request, the Division employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be a medical necessity, appropriate, and an effective use of available services. *Id.* The Division argues that the authorization criteria have not been satisfied for the reason given in Finding #3 above.

The Department asserts that it has reduced the PCW time to the amount it believes is necessary to perform purely PCW tasks. The petitioner contends that he needs all of the requested care time.

The state code does restrict MA-covered PCW tasks as follows:

(b) Covered personal care services are:

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(2)(b).

The petitioner established that she requires daily help with bathing. The Division allotted 60 minutes daily for this activity. Sixty minutes is the maximum for that activity, if no other cares are being provided. If other cares are provided, the bathing time drops to 30 minutes. The petitioner also requires assistance with dressing, per the testimony of herself and her IRIS worker, so the maximum for this task of 40 minutes daily is added here. I agree with the Division that she does not require care time for the following activities of daily living (ADL) tasks: grooming, eating, mobility, toileting, transfers. The petitioner and the IRIS worker testified to the presence of a longstanding large open sore on the petitioner's head, related to her lupus. She wears a dressing over the opening, which must be changed. The PCW task time allocation table identifies 5 minutes per skin care episode as adequate for such a task. I have added 10 minutes to the petitioner's care time for this need. The result is 80 minutes daily (30 + 40 + 10) of care needs, which equals 560 minutes weekly, or 9.5 hours weekly.

Thus, I will be increasing the petitioner's PCW time for the period to 9.5 hours.

***Note to Petitioner:** Your provider will not receive a copy of this Decision. In order to have the service requested here, you must provide a copy of this Decision to United Home Care. The provider must then submit a new prior authorization request to receive the approved service.]*

### **CONCLUSIONS OF LAW**

1. The petitioner requires **9.5** PCW hours weekly for the current authorization period.

**THEREFORE, it is**

**ORDERED**

That United Home Care is authorized to provide the petitioner with 9.5 hours weekly of PCW care for the authorization period beginning August 20, 2013, and to submit its claim, along with a copy of this Decision and a new prior authorization request, to ForwardHealth for payment. In all other respects, 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, 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 29th day of November, 2013

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\s\sNancy J. Gagnon  
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

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The preceding decision was sent to the following parties on November 29, 2013.

Division of Health Care Access And Accountability



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

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