



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

MPA/152332

PRELIMINARY RECITALS

Pursuant to a petition filed September 23, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General (OIG) in regard to Medical Assistance, a telephonic hearing was held on February 12, 2014, at Wausau, Wisconsin. At the request of petitioner, hearings scheduled for December 3, 2013, January 8, 2014, January 13, 2014, and January 27, 2014 were rescheduled. In addition, at the request of petitioner, his sister, [Redacted], translated for petitioner during the hearing. Petitioner's mother and representative, [Redacted], appeared and testified for the petitioner. OIG nurses [Redacted] and [Redacted] appeared and testified at the hearing. In addition, ESS [Redacted] translated for OIG. At the request of the parties, the record was held open for written closing arguments to be submitted to DHA. OIG timely submitted its written closing argument to DHA (and to petitioner's representative) on February 18, 2014. However, the petitioner's representative failed to submit any response by March 12, 2014 or even by the date of this decision.

The issue for determination is whether the Department correctly modified (reduced) the petitioner's prior authorization request for personal care worker (PCW) hours from 42 to 19 hours per week as of October 20, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

Representative:

[Redacted], mother
[Redacted]
[Redacted]

Respondent:

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

By: [Redacted], RN consultant
Office of the Inspector General (OIG)
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:  
Gary M. Wolkstein  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a 21 year old resident of Marathon County who is certified as eligible for MA. The petitioner resides with his family.
2. The petitioner is diagnosed with Pervasive Developmental Disorder and Expressive Language Disorder. See Attachment 1. The home health Plan of Care indicates that petitioner's functional limitations are endurance and speech. He needs an adult be present at all times to generally "supervise" him.
3. On or about June 3, 2013, the petitioner's fee-for-service provider, Universal Home Health Care, requested prior authorization (PA) for MA coverage of personal care worker (PCW) hours of 42.0 hours per week (168 units per week) for 53 weeks, at a total requested cost of \$36,180.00 See Exhibit 2.
4. The petitioner's personal care worker (PCW) is his sister, [REDACTED] [REDACTED], who is also an RN with Universal Home Health Care. [REDACTED] [REDACTED] resides with her family and the petitioner.
5. The petitioner's Personal Care Screening Tool (PCST) was completed by screener [REDACTED] [REDACTED] on June 3, 2013 at petitioner's home. See Exhibit 2. In that PCST, the screener evaluated the petitioner needs assistance with activities of daily living (ADLs) including bathing, upper and lower body dressing twice daily, and grooming twice daily. He is able to feed himself independently. He is documented as needing constant supervision and alleged to need physical intervention to ambulate and transfer. He was alleged to need toileting nine (9) times per day (6 toilettings and 3 incontinence cares per day). He takes no medications. The PCST requested time for range of motion twice daily to prevent contractures, and additional time for services incidental to tasks. Petitioner was alleged to have behaviors that interfere with the PCW's assistance with cares, but did not establish with any reliable evidence that there were any behaviors as interfering with the PCW's ability to complete care or make cares more time consuming for the PCW to complete.
6. The primary reason for needing PCW services is his Pervasive Developmental Disorder.
7. OIG conducted a PCST of the petitioner (with a translator and [REDACTED] [REDACTED] present) which indicated that petitioner needed significantly less time than the PCST completed and submitted by the provider, Universal Home Health Care. See Finding of Fact #3 above. The following are discrepancies between the provider's PCST and OIG's PCST of petitioner's PCW needs: a) OIG determined petitioner needed 30 minutes per day for 3 times of toileting (versus 90 minutes per day for 9 times of toileting related activities) because there was no evidence of incontinence and petitioner can toilet himself with some assistance; b) transfers – OIG determined that petitioner did not need transfer assistance of 30 minutes per day because petitioner can transfer independently with or without an assistive device; c) range of motion – OIG determined petitioner did not need assistance with his range of motion in which twice daily was requested; d) behaviors requiring additional PCW time – OIG determined that petitioner is cooperative and has not been aggressive with his PCW or his family thus did not require more time for PCW to complete tasks, due to behaviors while he does have autistic "rituals" such as pacing, object fixation and hand flapping.

8. On review of the PA Request, the Office of the Inspector General (OIG) modified the prior authorization request from the requested 42.0 to 19.00 PCW hours per week based upon the Personal Cares Screening Tool (PCST) assessing the petitioner's PCW needs and further investigation of that assessment.
9. On or about June 13, 2013, OIG issued a letter Notice to the petitioner's mother informing her that petitioner's PA requested personal care worker services had been reduced from 42.0 to 19.0 hours per week, and then approved as modified.
10. In its closing argument, the OIG's nurse consultant concluded in her written closing argument that: a) petitioner did not need the requested 90 minutes per day of toileting because he is able to sense the need to void and take himself to the toilet. He only needs occasional assistance following a bowel movement, and has no ongoing incontinence condition. Assistance with toileting 3 times daily (30 minutes) appeared appropriate; b) Time spent by the PCW at the home when no direct care is being provided is not a covered PCW service (Attachment 4). The OIG consultants stated on page 2 of its closing argument that the PCW program is not "intended to serve as a source of supervision or companionship for the member or as a full time job or source of income for the member and/or member's family."
11. The petitioner's representative failed to submit any response to OIG's closing argument by March 12, 2014 or even by the date of this decision.
12. Petitioner's representative did not establish with any reliable evidence or documentation that petitioner has PCW needs above the approved amount of 19.0 hours per week. See above Preliminary Recitals.

### DISCUSSION

The Office of the Inspector General (OIG) may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat. §§ 49.46(2) and 49.47(6)(a), as implemented by Wis. Admin. Code Ch. DHS 107. Some services and equipment are covered if a prior authorization request is submitted and approved by the Division in advance of receiving the service. Finally, some services and equipment are never covered by the MA program.

In the case of PCW services, MA pays only for medically-oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his place of residence in the community. Wis. Admin. Code § DHS 107.112(1)(a). **Covered PCW services include only 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(1)(b).

Further, PCW services must be provided according to a written plan of care that is based on an evaluation made by an RN who has visited the recipient's home. Wis. Admin. Code §§ DHS 107.112(1)(a) & (3)(b).

During the February 12, 2014 hearing, the petitioner's mother and representative, [REDACTED] [REDACTED], argued that she felt that petitioner needed more than 19.0 hours per week of PCW hours. However, during the hearing and in its closing argument, OIG consultants [REDACTED] [REDACTED] and RN [REDACTED] [REDACTED] provided specific testimony and reliable evidence/documentation to establish that the above 13 covered PCW services could be completed for petitioner in the reduced amount of 19.0 hours of PCW hours each week for the petitioner. See Findings of Fact #7 and #8 above. Furthermore, while the hearing record was held open, OIG submitted its persuasive closing argument to establish that the approved 19.0 PCW hours was inadequate to meet the petitioner's medically necessary needs. See Finding of Fact #10 above. The petitioner's representative did not submit any response to OIG's closing argument. See above Preliminary Recitals.

The petitioner was unable to refute the Department's convincing testimony, arguments and exhibits. Furthermore, petitioner was unable to establish that he has any covered PCW needs that are not being met by the 19.0 PCW hours approved by the Department. The hearing record does indicate that petitioner was requesting some additional PCW time for general adult "supervision," but supervision (when that is the only service being provided), is not a covered personal care worker service. Accordingly, based upon review of the entire hearing record, I conclude that the Department correctly modified (reduced) the petitioner's prior authorization request for personal care worker (PCW) hours from 42 to 19 hours per week as of October 20, 2013.

#### **CONCLUSIONS OF LAW**

The Department correctly modified (reduced) the petitioner's prior authorization request for personal care worker (PCW) hours from 42 to 19 hours per week as of October 20, 2013.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby Dismissed.

#### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 14th day of April, 2014

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\sGary M. Wolkstein  
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 April 14, 2014.

Division of Health Care Access and Accountability