



STATE OF WISCONSIN  
Division of Hearings and Appeals

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/153515

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed November 15, 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 December 19, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner has submitted evidence sufficient to demonstrate that additional personal care worker (PCW) hours may be paid for by the Medicaid program.

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, Room 651  
Madison, Wisconsin 53703

By: Robert Derendinger, 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:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. A prior authorization request seeking Medicaid payment for 28 hours (or 112 units with each unit = 15 minutes) per week of personal care worker (PCW) services, 32 units or 8 hours per week to be

used as needed, 6 skilled nursing visits to be used as needed and 7 hours (28 units) of travel time was filed on behalf of Petitioner on or about October 31, 2013. The cost was noted to be \$71,339.00. The requesting provider is Quality Assurance Home Health Care. The request was for 53 weeks.

3. Petitioner is 43 years of age (DOB 9/2/70). The diagnoses noted in the PA request documents are degenerative disk disease, lumbago, chronic pain, osteoarthritis and hypertension.
4. The Department approved 105 units per week or 26.25 hours of PCW services for Petitioner, the requested travel time and 3 as needed skilled nursing visits. As for the as needed PCW services the Department indicated in a letter dated December 5, 2013 (Exhibit #3) that it approved 96 units (24 hours) to be used over 53 weeks not 8 hours per week. The only reason for the reduction for 28 hours to 26.25 hours per week was because Petitioner does not live alone hence the time for services incidental was calculated using a 1/4 rather than a 1/3 multiplier. The Department modified the as needed skilled nursing request to 3 visits as 3 visits are already provided without prior authorization so Petitioner will have a skilled nursing visit every 60 days.
5. Petitioner also receives benefits through the IRIS program and her daughter is her caregiver through that program. Her daughter does live in the home. Her personal care worker through fee for service Medicaid does not live in the home.

### DISCUSSION

When determining whether to approve any medical service, the OIG must consider the generic prior authorization review criteria listed at *Wis. Admin. Code*, § DHS 107.02(3) (e):

(e) *Departmental review criteria.* 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. Admin. Code, §DHS 101.03(96m).*

Also, the following Administrative Code provision is relevant here:

**DHS 107.112 Personal care services. (1) COVERED SERVICES.** (a) 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. 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. The personal care worker shall be assigned by the supervising registered nurse to specific recipients to do specific tasks for those recipients for which the personal care worker has been trained. The personal care worker's training for these specific tasks shall be assured by the supervising registered nurse. The personal care worker is limited to performing only those tasks and services as assigned for each recipient and for which he or she has been specifically trained.

(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(1)(a) and (b).*

I note at this point that the Petitioner has the burden of proving that the requested service meets the approval criteria and that the standard level of proof applicable is a "preponderance of the evidence". This legal standard of review means, simply, that "it is more likely than not" that Petitioner and/or his/her representatives have demonstrated that the requested day treatment meets the criteria necessary for payment by the Wisconsin Medicaid program. It is the lowest legal standard in use in courts or tribunals.

As noted in the Findings, the Department modified the request for 8 hours per week to 24 hours per year to be used as needed. The 28 hour per week request for PCW services was changed to 26.5 only because Petitioner's daughter is in the home. Where a person lives alone 1/3 of the time allocated is added for

services incidental to tasks but 1/4 is the time added where a person does not live alone. *See online Medicaid Handbook, Topic 3167, found at <https://www.forwardhealth.wi.gov>.* Here the result of this is a 1 unit or 15 minute per day reduction from the requested time.

Petitioner testified that her daughter is pregnant and on bed rest with the baby due in February 2014. Thus she effectively is living alone and should have 28 hours of PCW services per week not 26.25 hours. She also notes that she needs more time for assistance with toileting than was allowed as her high blood pressure medication acts as a diuretic.

I am sustaining the Department's modifications to the prior authorization request. Petitioner does not live alone. Though her daughter is expecting a baby there is no indication from the provider, with documentation, as to the daughter's physician orders. At the time of the Department's modification in November 2013 there was nothing from the provider indicating circumstances had changed. Petitioner does have IRIS funding for her daughter's care and with those funds could arrange for substitute care while the daughter is inactive.

**NOTE: The provider will not receive a copy of this Decision. Petitioner must provide a copy of this Decision to the provider if she wants them to have a copy.**

### **CONCLUSIONS OF LAW**

That the evidence offered on behalf of Petitioner is not sufficient to demonstrate that an additional 1 unit or 15 minutes per day of personal care worker services meet the standards necessary for Medicaid payment at this time.

**THEREFORE, it is**

**ORDERED**

That this appeal 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 Milwaukee,  
Wisconsin, this 31st day of January, 2014

---

\sDavid D. Fleming  
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 January 31, 2014.

Division of Health Care Access and Accountability