



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/153555

PRELIMINARY RECITALS

Pursuant to a petition filed November 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 in regard to Medical Assistance, a hearing was held on January 07, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly modified the Petitioner's PA request for personal care worker services.

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

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She lives at home with her family.

2. Petitioner is 54 years old. Her primary diagnoses include morbid obesity, urinary incontinence, chronic pain, type 2 diabetes mellitus, congestive heart failure, hypertension, arthritis, visual impairment, sleep apnea, malaise and fatigue. Her functional limitations include bowel/bladder incontinence, endurance, ambulation, dyspnea with minimal exertion and unsteady gait. Petitioner may be “up as tolerated” with use of cane, wheelchair and walker.
3. On March 11, 2013, a Long Term Care Functional Screen (LTCFS) was completed on the Petitioner. The LTCFS assessed her needs as follows:
 - Bathing – Level 1 – supervision, cueing, hands-on assistance needed – helper need not be present.
 - Dressing – Level 1 – supervision, cueing, hands-on assistance needed – helper need not be present
 - Eating – Independent
 - Mobility – Independent. Uses cane and walker in home.
 - Toileting – Independent. Has incontinence less than daily but at least 1x/week.
 - Transferring – Independent.
 - Meal Preparation – Level 1 – needs help weekly or less
 - Medication Administration/Management – Independent
 - Money Management – Independent
 - Laundry and/or Chores – Level 1 – needs help weekly or less
4. On August 29, 2013, a Personal Care Screening Tool (PCST) was completed by the Petitioner’s provider. The PCST estimated 16.25 hours/week of PCW services based on the following assessment:
 - Bathing – Level E – unable to effectively participate in bathing; totally bathed by another person. Assist in/out of tub, shampoo hair, wash/rinse/dry all body parts due to decreased endurance and limited ROM, requires rest breaks due to shortness of breath and pain. 45 minutes, 7 days/week
 - Dressing – Upper body – Level D – need partial physical assist, 2x/day, 7 days/week. Unable to button, snap or zip due to pain and poor fine motor skills. Requires rest breaks due to shortness of breath, limited ROM and pain, obesity. Unable to bend.
 - Dressing – Lower body – Level E – depends entirely upon another person, 2x/day, 7 days/week.
 - Assistance with apply TED hose in PM and removing in AM, 7 days/week.
 - Grooming – Level F – depends entirely upon another person, 7 days/week. Set up oral care, ensure task completion, shampoo hair, comb/brush hair, provide nail care, foot care.
 - Eating – Level B – feeds self but requires intermittent supervision for breakfast and dinner, 7 days/week. Cue and redirect to complete task due to dietary needs related to diabetes and insulin; poor appetite.
 - Mobility – Level B – able so move self but requires intermittent supervision or cueing, 7 days/week. PCW to provide elbow support for stability to prevent falls related to poor gait pattern, poor balance. Requires walker/cane for walking. Uses wheelchair in home, having increased pain, needs assistance maneuvering in hallway/around furniture.
 - Toileting – Level B – toilets self or provide own incontinence care but requires presence of another person intermittently for supervision or cueing, 7 days/week. Toilets in AM x

2 and PM x 2; increased toileting needs with morning diuretic, incontinent 2x after morning diuretic; unable to get to bathroom quickly enough, wears incontinence pad.

Transferring – Level B – transfers self but requires intermittent supervision or cueing, 7 days/week. PCW to provide elbow assist to rise from seated or lying position due to pain, poor balance and decreased ROM.

Medication Assistance – Level A – independent. Provide medication reminders.

Range of Motion – 2x/day, 7 days/week. Upper and lower extremity, up to 15 min./2x/day to prevent contractures, loss of ROM.

CPAP – apply and remove mask, clean and set up, 1x/day, 7 days/week.

The notes on the PCST indicate that Petitioner requires increased time to complete all tasks due to pain related to degenerative joint disease, significant shortness of breath and obesity.

5. The provider submitted a Personal Care Addendum with the PA request. It notes that as a result of cross-screen validation (CSV), it changed the PCST levels as follows:

Changed Mobility from D to B. LTCFS does not fully capture needs. Requires cane for mobility at all times with elbow support due to poor gait pattern and poor balance related to arthritis and pain. Depending on pain and unsteadiness, uses wheelchair in home for safety reasons, requires assistance maneuvering the wheelchair through narrow doorways and hallway. Needs a knee replacement but is not medically stable enough for surgery.

Changed Transferring from D to B. LTCFS does not fully capture needs. Requires elbow assist to rise from seated or lying position and to go from standing to sitting due to pain, poor balance and decreased ROM.

Changed Toileting from D/E to B. LTCFS does not fully capture needs. Requires elbow assist to sit/stand. Requires assistance with clothing management, appropriate cleansing (difficulty bending/reaching), often experiences morning incontinence after diuretic as she has difficulty getting to the bathroom quickly enough due to slow and unsteady gait.

Changed Medication Assistance from D to A. LTCFS does not fully capture needs. She can correctly identify meds and follow MD directions but has decreased sensation in fingers due to diabetic neuropathy and has difficulty opening bottles at times.

5. On October 2, 2013, the Petitioner's provider, Independence First, submitted a Prior Authorization (PA) request for 31.5 hours/week of personal care worker (PCW) services beginning November 15, 2013.
6. On October 14, 2013, the agency approved 17.5 hours/week of PCW services.
7. On November 16, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

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.

In reviewing the PCW time requested, I note that the provider, Independence First, oddly requested 31.5 PCW hours weekly, with a PCST that only supported a need for 16.25 hours weekly. The provider's

documentation does include an addendum that provides some reasons why the PCST does not fully capture the Petitioner's needs. In particular, the addendum indicates that the PCST was adjusted because of the inconsistencies between the PCST and the LTCFS. However, as the agency noted in its written summary, there is no evidence that the provider attempted to reconcile the inconsistencies with the LTCFS screener. The provider's documentation is not sufficiently detailed to reconcile the differences and does not support the request for an additional 15.25 hours/week.

The agency did agree with the time assessed in the PCST and even approved an additional 1.25 hours/week for a total of 17.5 hours/week. The agency allotted maximum time for bathing, dressing, grooming, application of TED hose and CPAP assistance. The Petitioner's testimony was essentially consistent with the findings of the PCST with the exception of toileting. The Petitioner did provide credible testimony that she needs assistance with getting on and off the toilet and cleansing after toileting. However, the extra 1.25 hours/week added by the agency to the 16.25 hours/week supported by the PCST is more than reasonable to accomplish these tasks. I agree with the agency that the testimony and evidence indicate that the Petitioner requires stand-by assistance only for mobility and transfers. This is not covered and no time is allocated. Further, as the agency indicates, Independence First does not provide medication assistance and time cannot be allotted for that task. I also agree with the agency that the evidence submitted with the PA does not support any diagnoses that requires daily ROM.

Based on the evidence submitted, the agency properly approved 17.5 hours/week of PCW services for the Petitioner.

CONCLUSIONS OF LAW

The agency properly approved 17.5 hours/week of PCW services for the Petitioner.

THEREFORE, it is

ORDERED

That the Petitioner's 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 4th day of March, 2014

\sDebra Bursinger
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 4, 2014.

Division of Health Care Access and Accountability