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

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In the Matter of

██████████ ██████████  
c/o ██████████ ██████████  
██████████ ██████████  
██████████ ██████████

DECISION

MPA/154578

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 30, 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 March 05, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department erred in modifying the PA request for personal care worker (PCW) hours.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

██████████ ██████████  
c/o ██████████ ██████████  
██████████ ██████████  
██████████ ██████████

Respondent:

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

By: Sharon Beck, RN, BSN (in writing)  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.

2. The provider, Independence First, submitted PA # [REDACTED] for 33.25 hours of PCW services as well as 28 hours for travel.
3. The Department approved 27.75 hours per week of PCW time and all the requested travel time.
4. Petitioner appealed.

### DISCUSSION

MA coverage of PCW services is described in the Wis. Adm. Code, §DHS 107.112. Covered services are specified in subsection (1), and are defined generally as "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." Examples of covered services are assistance with bathing, with getting in and out of bed, with mobility and ambulating, with dressing and undressing, and meal preparation. The Code also provides that, "No more than one-third of the time spent by a personal care worker may be in performing housekeeping activities." Wis. Adm. Code, § DHS 107.112(3)(e).

In determining the number of PCW hours to authorize, the OIG uses the standard above along with the general medical necessity standard found at Wis. Adm. Code, § DHS 101.03(96m). Essentially the medical necessity standard requires a service to be basic and necessary for treatment of an illness, not necessarily the best service possible, and not just for convenience. To determine the number of PCW hours to authorize the OIG uses the Personal Care Screening Tool (PCST), a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The PCST allots a specific amount of time in each area the recipient requires help, which the OIG's reviewer can then adjust to account for variables missing from the screening tool's calculations.

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).

This case is a perfect example of the value of the PCST and the determination of a uniform “norm” for specific standard PCW tasks. The problem with family members being the personal care workers is that it is that they may take more time to do care tasks due to inexperience or carefulness, and thus the Department has set maximum times for a typical care worker.

In this case, the caregiver is the sister of the petitioner. She has no other clients to whom she provides care other than her brother. She has no other experience as a caregiver. Ms. [REDACTED] simply argued that she needs more time to accomplish the tasks required. She did not present any independent testimony or assessments. Nor did she provide testimony of any medical professionals or submit any additional supporting documentation.

The Department consultant argued that the request was unsupported as the PCST submitted by the provider included time for many things that are not justified by the medical records. As an example, the provider noted seizures on the PCST. But, such a designation is only called for when weekly seizures call for interventions. The history of seizures indicate none in the past year. The Department notes other entries that would unjustifiably inflate the hours for the PCW. Petitioner’s sister did not rebut the claims of the Department, nor did any other staff appear from the provider. I also recognize the personal financial interest of Ms. [REDACTED] in the outcome of this case.

At hearing on the issue of modification of a PA request, it is the burden of petitioner or the provider to establish the need and appropriateness of the requested services. Petitioner has done neither based on this record.

### **CONCLUSIONS OF LAW**

The Department did not err in modifying the request for PCW hours.

**THEREFORE, it is ORDERED**

That this appeal is 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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\sJohn P. Tedesco  
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