



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/154933

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 17, 2014, 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 February 26, 2014, at Milwaukee, Wisconsin. At the request of the petitioner the record was held open for 10 days; and then extended for 11 more days; and further extended 2 more days; to submit additional documentation.

The issue for determination is whether the DHCAA correctly denied the petitioner's Prior Authorization Request for coverage of personal care worker (PCW) hours.

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

Written Appearance By: Sharon Beck, R.N., Nurse Consultant  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Kenneth D. Duren, Assistant Administrator  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a 61 year-old resident of Milwaukee County. He is certified as eligible for Medical Assistance. He lives alone in a private residence. He has diagnoses of coronary artery anomaly with a history of a heart bypass, hypertension, edema, dyspnea with minimal exertion, gout, arthritis, and chronic pain.

2. The petitioner takes carvedilol, atorvastatin, aspirin, Sipronolactone, lorsartan, metoprolol, tramadol, Zelta, furosemide, Vicodin and a multivitamin. See, Exhibit #4, at p.4, received on March 19, 2014.
3. The petitioner needs medication reminders, assistance with transferring, bathing, grooming, meal preparation, and light housekeeping. He uses a cane, and has been trying to obtain, with a physician's prescription, a power scooter for out of home use. He has begun using a manual wheelchair in his home for transfers.
4. On October 17, 2013, the petitioner's health care provider submitted a Prior Authorization Request (PA/R) to the Department's Division of Health Care Access and Accountability requesting coverage of 10.5 hours of personal care worker (PCW) services per week, for 53 weeks, at a stated cost of \$894,852.00, or \$1,608 per hour, and \$402 per 15 minute unit for PCW cares. See, Exhibit #2, at p. 4.
5. The PA/R submitted by the provider included a Personal Care Screening Tool assessment performed on September 6, 2013, that estimated the petitioner required 8.25 hours per week, plus 24 hours per year as needed, in PCW services to meet his needs.
6. The provider also submitted multiple and contradictory Plans of Care for the petitioner. See, Exhibit #1, at pp. 5-7, for a listing and description of these POCs. The PA/R was returned by the DHCAA to the provider three times seeking more clarification and additional information. The provider failed to provide additional information sought, like physician's notes or therapy notes. The provider failed to reply directly in writing to any of the consultant's queries. Ibid.
7. On January 6, 2014, the DHCAA issued a Notice to the petitioner informing him that his PA Request for Prior Authorization for reimbursement of personal care worker services had been denied because it did not meet program requirements.
8. On January 17, 2014, the petitioner filed an appeal with the Division of Hearings & Appeals, and asserting that his conditions had changed and he needed additional care hours.
9. At the hearing held on February 26, 2014, the petitioner and his nurse provider asserted for the first time that he required 4 hours per day of PCW services due to his declining health, and apparently asserting that the Department would only approve 1.5 hours per day and that was not sufficient.
10. The Department denied the initial PA Request entirely; it did not grant 1.5 hours of PCW services per day at any time. See, Exhibit #1.
11. The record was held open for additional medical documentation from the petitioner. It was received and includes a Care Plan Attachment dated March 19, 2014, that asserts that the petitioner requires assistance with ambulation, transferring and dressing. See, Exhibit #4, at p. 6. The Plan of Care also asserts that the petitioner's present condition requires 4 hours per day of PWC services.

### **DISCUSSION**

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." Wis. Admin. Code, §DHS 107.112(1)(a). Covered services include 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(b).

Personal care workers can spend no more than one-third of their time performing housekeeping activities. Like all medical assistance services, PCW services must be medically necessary and cost effective. Wis. Admin. Code, §DHS 107.02(3)(e)1 and 3.

In addition, the Wisconsin Medicaid and BadgerCare Update 2006-71 clearly states:

If after the PCST is completed the RN determines that an insufficient number of units have been allocated for the recipient's personal care services, the RN should identify the factors present to justify a greater allocation of units than that computed by the PCST.

The PCST is designed by the Department to be a *guideline* and “tool” to achieve consistency statewide in the submission of prior authorization requests for the coverage of PCW service claims. It is not, however, a substitute for the professional review process exercised by the Department's Nursing Consultant in the approval, denial or modification of Prior Authorization Requests. If the assessing RN wants to submit a PA Request for *more hours* than the tool indicated, she can, and should, do so with supporting documentation, and the Nurse Consultant will review and evaluate the merits of the actual PA Request.

In this case, the provider does not seem to understand the documentation requirements to receive a favorable result in in Prior Authorization claim. It has ‘churned” a great deal of Plan of Care documentation, but it failed at submission to DHCAA to provide clear physician approval statements for the sought regimen, has been essentially unresponsive to the direct requests for information and questions asked, and has now appeared at a fair hearing seeking approval of PCW services at a rate nearly three times greater per day than what the provider itself asked for in the initial PA Request. There is no evidence in this record that the provider requested an amendment or filed a new PA Request because the petitioner's needs are changing, or at least asserted to be changing. This home health agency desperately needs to review its PA Request procedures, and the requesting nurse needs to pick up the telephone and speak with a Nurse Consultant about how to submit a successful claim.

I believe that the petitioner needs some PCW services due to the infirmities of aging, but the amount medically necessary has not been established by this scatter-shot documentation effort. The clinical documentation provided here by the home health agency has been woefully insufficient to establish the medical necessity of the requested regimen, and this insufficiency has been compounded by the agency's attempt to use the hearing process to obtain approval for a service plan increase above what was initially request. That won't do. The process is designed for the Nurse Consultant to review new evidence and amended or new requests for more service.

At this point I cannot conclude that the Department erred in denying the requested PCW services because the petitioner's providers have not established the clear medical necessity of a given regimen of PCW services. The agency denial must be sustained. The petitioner would be well-advised to file a new Prior Authorization Request demonstrating the hours required to meet his medical needs, with appropriate physician approval of the regimen, and a full set of clinical documents. This decision does not preclude him from filing a new Request for PCW hours. Rather, it means that the current request has been too

procedurally defective to grant; and the documentation originally provided was insufficient to establish medical necessity of any specific amount of PCW services.

### **CONCLUSIONS OF LAW**

The DHCAA correctly denied the petitioner's PA Request for PCW service hours; the petitioner has not established by the preponderance of the evidence in the record that he was entitled to the requested services at the time of the request.

**THEREFORE, it is** **ORDERED**

That the petition for review herein be and the same is hereby 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 21st day of March, 2014

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\sKenneth D. Duren, Assistant Administrator  
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 March 21, 2014.

Division of Health Care Access and Accountability