



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
c/o [REDACTED] & [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/155226

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 30, 2014, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to modify a Medical Assistance (MA) authorization for personal care worker (PCW) services, a hearing was held on March 12, 2014, by telephone.

The issue for determination is whether petitioner should receive 8, rather than 6.96, hours PCW services daily.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
c/o [REDACTED] & [REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Written submission of Kelly Townsend, RN

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who receives MA.
2. Petitioner is diagnosed with quadriplegia, peripheral neuropathy, urinary and fecal incontinence. He required regular PCW assistance, and his mother and stepfather are his primary PCWs.
3. On December 3, 2013, Independence First requested authorization for 56 hours per week PCW services along with an additional 24 hours per year as needed, PA no. [REDACTED]. By a letter

dated December 20, 2013, the DHCAA approved 48.75 hours per week along with the additional as needed hours.

4. The reduction in slightly more than one hour per day was due to zeroing out time for mobility. That was done because all information provided to the DHCAA over time shows that petitioner has a power wheelchair that he is able to operate. At both the purchase of the wheelchair and in a later request for a new joystick it was reported that petitioner could operate the wheelchair. In both physical and occupational therapy reports in the summer, 2013, the therapists noted that petitioner operated his own wheelchair. The OT report noted that he has problems with safety awareness and requires verbal cues for safe operation.
5. In all other PCW areas petitioner receives maximum daily allowance or higher amounts of time due to his unique care needs.

### 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.

To determine the numbers of PCW hours providers and the DHCAA use the Personal Care Screening Tool (PCST), a tool meant to consistently determine the number of hours required by each recipient. The screening tool allots a specific amount of time in each area the recipient requires help, which the DHCAA’s reviewer can then adjust to account for variables missing from the screening tool’s calculations.

The sole reason for reducing the requested hours had to do with mobility assistance. The PCST noted that petitioner requires daily assistance with mobility, noting that petitioner “has limited/poor control of his electric wheelchair and depends on his caregiver to control his wheelchair.... In the home he usually uses an adaptive wheelchair propelled by caregiver.” That note belies virtually all of the history behind the electric wheelchair. In the original request and the request for the replacement joystick petitioner was said to be able to operate the wheelchair. In the OT and PT notes from mid-2013 there were no

suggestions that petitioner was unable to physically operate the chair, just that he sometimes requires verbal reminders.

This history shows a bait-and-switch approach that the Department, and this judge personally, has seen. A power wheelchair is granted based upon assurances that the individual can operate it, and then later there are submissions saying just the opposite, often in requests for new manual wheelchairs. I note that it is very unlikely that a power wheelchair would have been granted if the DHCAA had been told that petitioner uses a manual wheelchair at home.

I conclude that the reduction in PCW hours was appropriate. I do not doubt that the providers assist petitioner with mobility, but they do so because it is easier to operate the chairs themselves than to allow petitioner to operate it himself. MA services and equipment are not to be provided for caretaker convenience. See Wis. Admin. Code, §DHS 101.03(96m)(b)7. Assisting petitioner with mobility is essentially a convenience for the caretakers given that petitioner was provided a power wheelchair to operate on his own.

I realize that this decision is at odds with my fellow judge's decision of April, 2013 on the same issue, no. MPA-148959. I believe the judge in that case missed the importance of the submissions supporting the purchase of the chair and replacement of the joystick when he said that the DHCAA position "is not supported by the documentation that is part of the record at this time." In addition, that judge did not have the additional record of the OT and PT evaluations from the summer, 2013 that support the impression that petitioner is able to operate the wheelchair.

As noted, all other PCW services areas were approved for maximum or even more than maximum daily time. Ms. [REDACTED] questioned the amount of time for daily bathing, but there was no reduction of bathing time. In the case summary Nurse Townsend questioned whether 30 minutes daily was too high given a note that petitioner was bathed at his day programming, but she did not reduce the daily amount. It was a comment, not an action.

### **CONCLUSIONS OF LAW**

The DHCAA correctly reduced petitioner's daily PCW services due to a finding that he did not need assistance with mobility.

**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 18th day of March, 2014

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\sBrian C. Schneider  
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 18, 2014.

Division of Health Care Access and Accountability