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

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In the Matter of

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

DECISION

MPA/155242

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 01, 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 telephonic hearing was held on April 02, 2014, at Chilton, Wisconsin.

The petitioner's mother, ██████████ ██████████, represented 25 year old ██████████ ██████████ at that hearing. During that hearing, petitioner's representative requested that the record be held open for documents to be submitted to the Division of Hearings and Appeals, and then for those documents to be sent to the Office of the Inspector General (OIG) for a reconsideration decision with an opportunity for a reply by Ms. ██████████.

This Administrative Law Judge (ALJ) send an April 22, 2014 cover letter to Ms. ██████████ at the Office of the Inspector General (OIG) with the following documents which were received at DHA: a) petitioner's April 1, 2014 Emergency Department report; b) petitioner's April 4, 2014 progress notes and reports from Blood and Marrow Transplant Clinic; c) Children's Hospital Discharge Summary for petitioner's Bone Marrow Transplant of March 3, 2014; d) petitioner's February 28, 2014 Bone Marrow Transplant report and history; e) February 15, 2014 Pediatric Pulmonary Clinic Note; f) January 24, 2014 Pediatric Psychology Progress Note; g) January 20, 2014 Children Hospital of Wisconsin Discharge Summary for Bone Marrow Transplant; and h) January 16, 2014 BMT Admit H & P by Dr. ██████████ ██████████, MD.

In that same letter, this ALJ requested that Ms. ██████████ review the enclosed copies of letters, and submit a detailed reconsideration summary to me at the Division of Hearings and Appeals by May 8, 2014 with a copy of that reconsideration summary letter to be sent to the petitioner's representative, ██████████ ██████████. Ms. ██████████ was granted until May 19, 2014 to submit to DHA (and to OIG) any response to Ms. ██████████'s reconsideration summary.

Ms. ██████████ timely submitted OIG's reconsideration statement to DHA and to petitioner's representative. However, petitioner's representative did not submit any response to DHA by May 19, 2014 or even by the date of this decision.

The issue for determination is whether the Department correctly modified (reduced) the petitioner's prior authorization (PA) request for personal care worker (PCW) hours from 28 to 14 hours per week.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

█ █  
c/o █ █  
█  
█

Representative:

█ █, mother  
█  
█

Respondent:

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

By: █ █, RN 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:

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a 25 year old resident of Calumet County who lives with his family.
2. The petitioner is diagnosed with Lymphoid Leukemia, seizure disorder, cognitive delay, hypertension, gastroesophageal reflux (GERD), severe chronic obstructive and restrictive lung disease, and heart blockage.
3. The petitioner required hospitalization during March, 2014, due to upper respiratory infections complicated by lung disease. During January, 2014, petitioner was hospitalized for fungal pneumonia.
4. █ uses a wheelchair for long distances, but is able to walk independently for short distances (for about three minutes and then needed rest). The petitioner walks up and down stairs in his home about 10 minutes per day for exercise, especially during the winter months when he cannot walk outside.
5. Petitioner is developmentally delayed, but is able to answer questions appropriately.
6. On or about October 30, 2013, the petitioner's fee-for-service provider, ResCare Home Care, requested prior authorization (PA) for MA coverage of personal care worker (PCW) hours of 38.5 hours per week. In addition to the request for PCW services, petitioner requested Skilled Nurse visits every 14 days for IGG infusion therapy. On November 27, 2013, OIG received an updated PA requesting PCW services in the reduced amount of 28 hours (112 units) per week for 53 weeks. See Exhibit 2.
7. The petitioner's personal care workers (PCWs) are his mother and her mother's significant other. █ resides with his mother.
8. The petitioner's Personal Care Screening Tool (PCST) was completed by screener █ █ on November 14, 2013 at petitioner's home. See Exhibit 2. In that PCST, the screener

generally evaluated the petitioner's needs to be 4 hours per day (28 hours per week) of personal care worker hour services. The assistance with activities of daily living (ADLs) included maintain safety precautions, clear pathways, seizure precautions, bath-assist with shower, grooming, dressing assist with clean clothes, assist with meal preparation. Start Oxygen after any seizures. Notify RN of any significant change in condition. PCW takes petitioner to outpatient visits at clinic as directed. and housekeeping incidental to cares.

9. In regard to ADLs, the PCST indicated that [REDACTED] bathes with partial physical assistance of another person. He dresses his upper and lower body with supervision and physical intervention. Petitioner requires partial assistance to groom. [REDACTED] feeds himself with intermittent supervision or cueing. [REDACTED] transfers and mobilizes himself with supervision and physical intervention to ensure task completion. Petitioner toilets himself or provides his own incontinence care with or without an assistive device. [REDACTED] needs the physical help of a PCW to take his medications 4 times per day. [REDACTED] was not documented as having behaviors (other than seizures 2-3 times per week) that present a unique challenge for caregivers.
10. Based upon his Personal Care Activity Time Allocation Table and his PCST, the petitioner was approved for the following reduced amount of 14 hours of PCW services per week: a) Bathing – 210 minutes per week; b) Dressing of upper and lower body – 20 minutes per day; c) Grooming (twice daily) 30 minutes per day; d) Mobility – 0 minutes per week because [REDACTED] is generally independent with mobility and has a stable gait; e) Transfers – 0 minutes per week because petitioner generally able to transfer himself except after seizures (when PCW time is allotted) f) Vital signs/medication assist – 0 minutes per week because no physician order for any task delegated to the PCW to perform for the petitioner; g) Behaviors – Seizure intervention – 140 minutes per week for 2-3 times of seizure activity occurring and Services Incidental task – 140 minutes per week for ADLs and medically oriented services (MOT). The petitioner's total ADL and MOT were 14 hours per week (56 units).
11. On review of the PA Request, the Office of the Inspector General (OIG) modified the prior authorization request from the requested 28.0 to 14.00 PCW hours per week based upon the Personal Cares Screening Tool (PCST) assessing the petitioner's PCW needs and further investigation of that assessment, based upon Finding of Fact #10 above.
12. OIG issued a letter Notice to the petitioner's representative informing her that petitioner's PA requested personal care worker services had been reduced from 28.0 to 14.0 hours per week, and then approved as modified.
13. In its closing argument, the OIG's nurse consultant concluded in her written closing argument that petitioner has not established with any reliable, specific evidence that petitioner needs more than 14 hours per week of PCW services.
14. The petitioner's representative failed to submit any response to OIG's closing argument by May 19, 2014 or even by the date of this decision.
15. Petitioner's representative did not establish with any reliable evidence or documentation that petitioner has PCW needs above the approved amount of 14.0 hours per week. See above Preliminary Recitals.

### **DISCUSSION**

The Office of the Inspector General (OIG) may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat. §§ 49.46(2) and 49.47(6)(a), as implemented by Wis. Admin. Code Ch. DHS 107. Some services and equipment are covered if a prior authorization request is submitted and approved by the Division in advance of receiving the service. Finally, some services and equipment are never covered by the MA program.

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).

Further, PCW services must be provided according to a written plan of care that is based on an evaluation made by an RN who has visited the recipient's home. Wis. Admin. Code §§ DHS 107.112(1)(a) & (3)(b).

During the April 2, 2014 hearing, the petitioner's mother and representative, [REDACTED] [REDACTED], argued in vague terms that she felt that petitioner needed more than 14.0 hours per week of PCW hours. However, petitioner's representative was unable to specifically indicate any area where the approved 14 hours of PCW hours was insufficient to meet the petitioner's PCW needs in any of the above 13 covered PCW services. While the record was held open, Ms. [REDACTED] did submit many clinical and medical records regarding [REDACTED]'s medical conditions which established his serious medical problems. However, the submitted documentation did not support any specific need for the petitioner's PCW hours to be increased above 14 hours per week. In her reconsideration, Ms. [REDACTED] did indicate that the documentation did support the medical necessity of intermittent skilled nursing services, not increased PCW services.

On the other hand, OIG nurse consultant, [REDACTED] [REDACTED], provided specific evidence and documentation to establish that the above 13 covered PCW services could be completed for petitioner in the reduced amount of 14.0 hours of PCW hours each week for the petitioner. See Finding of Fact #10 above. Furthermore, while the hearing record was held open, OIG submitted its persuasive closing argument to establish that the approved 14.0 PCW hours was adequate to meet the petitioner's medically necessary needs. The petitioner's representative did not submit any response to OIG's closing argument. See above Preliminary Recitals.

The petitioner was unable to refute the Department's persuasive written arguments and exhibits. Furthermore, petitioner was unable to establish that he has any covered PCW needs that are not being met by the 14.0 PCW hours approved by the Department. Accordingly, based upon review of the entire hearing record, I conclude that the Department correctly modified (reduced) the petitioner's prior authorization request for personal care worker (PCW) hours from 28 to 14 hours per week.

**CONCLUSIONS OF LAW**

The Department correctly modified (reduced) the petitioner's prior authorization request for personal care worker (PCW) hours from 28 to 14 hours per week.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby 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 17th day of June, 2014

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\sGary M. Wolkstein  
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 June 17, 2014.

Division of Health Care Access and Accountability