



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

[Redacted]

|

[Redacted]

HMO/155868

**PRELIMINARY RECITALS**

Pursuant to a petition filed February 28, 2014, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on March 26, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner’s personal care worker hours have been correctly determined by the Family Care agency.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[Redacted]

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Respondent:

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

By: Atty. Steven Wall  
iCare  
1555 N. Rivercenter Drive  
Suite 206  
Milwaukee, WI 53212

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County. She is a Medicaid recipient receiving services through iCare.
2. A prior authorization request was filed on behalf of Petitioner with her HMO seeking payment for personal care services at a frequency of 2 hours per day 6 days per week and 3 hours per day 1 day per week. This level of services was apparently provided pending the processing of an in-home assessment of Petitioner.

3. After the in-home assessment was analyzed, Petitioner was approved for a half hour of PCW services per day (this is 2 units as a unit is 15 minutes). That is the level of service provided since early February 2014.
4. The ½ hour or 2 units of PCW services approved were to assist Petitioner with meals. She was determined to be independent as to the rest of her activities of daily living (ADLs) except 1-2 bad days per month. She does utilize a shower chair and has a riser for the toilet seat.
5. The HMO decision was reviewed by the Department of Health Services and it concurred with the iCare decision.

### DISCUSSION

Under the discretion allowed by *Wis. Stat.*, §49.45(9), the Department of Health Services (DHS) requires MA recipients to participate in HMOs. *Wis. Admin. Code*, § DHS 104.05(2)(a). Medicaid recipients enrolled in HMOs must receive medical services from the HMOs' providers, except for referrals or emergencies. *Wis. Admin. Code*, § DHS 104.05(3).

The criteria for approval by a managed care program contracted with the DHS are the same as the general Medicaid criteria. See *Wis. Admin. Code*, § DHS 104.05(3) which states that HMO enrollees shall obtain services "paid for by MA" from the HMO's providers. The Department must contract with the HMO concerning the specifics of the plan and coverage. *Wis. Admin. Code*, § DHS 104.05(1).

If the enrollee disagrees with any aspect of service delivery provided or arranged by the HMO, the recipient may file a grievance with the department or appeal to the Division of Hearings and Appeals.

When determining whether to approve any service, the HMO, as with the Department, must consider the generic prior authorization review criteria listed at *Wis. Admin. Code*, § DHS 107.02(3)(e). The Medicaid program may only reimburse providers or 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 require submission and approval of a written prior authorization request by the provider. Some services and equipment are never covered.

As with most public assistance benefits the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage falls on the applicant, *Gonwa v. Department of Health and Family Services*, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003). In other words, it is a Petitioner's burden to demonstrate that s/he qualified for the requested services by a preponderance of the evidence. It is not the HMO's burden to prove that s/he is not eligible. Further, I note that Medicaid is meant to provide the most basic and necessary health care services at a reasonable cost to a large number of persons and must authorize services according to the Wisconsin Administrative Code.

Petitioner argues that the 30 minutes per day allotted for meals is not sufficient. She testified that she has about 15 bad days per month, not one or two. Further, she indicated that she needs more help with meals as she is diabetic and needs a healthy diet. Finally, she stated that circumstances have changed as she fell in mid-to-late February and that aggravated her health conditions.

I am sustaining the HMO determination here. The assessment performed in her home by the HMO clearly indicated that Petitioner was capable of performing her ADLs on all but 1-2 days per month. That is not sufficient to approve PCW cares. See *ForwardHealth Provider Information, January 11, 2011, No. 2011-02; part of Ex. # B2 – Parameters for Making Selections on the Personal Care Screening Tool at page 38*. Nonetheless, it was apparent from Petitioner's testimony that her February 2014 fall has created a need for a reassessment of Petitioner's condition. It was agreed at the hearing that this should be performed. If the results of that assessment do not result in cares Petitioner believes are necessary she may again file an appeal with the Division of Hearings and Appeals.

**CONCLUSIONS OF LAW**

That the agency correctly determined that 2 units of personal care worker services per day are the appropriate level services for Petitioner.

**THEREFORE, it is**

**ORDERED**

That this 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 15th day of May, 2014

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\sDavid D. Fleming  
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 May 15, 2014.

iCare  
Division of Health Care Access and Accountability