



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

HMO/156308

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 20, 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 May 28, 2014, at Milwaukee, Wisconsin. The matter was originally scheduled for April 30, 2014 but was rescheduled based on the petitioner's assertion that she had not received the packet of exhibits from iCare.

The issue for determination is whether the HMO, iCare, erred in its reduction of petitioner's approved 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

By: Meri DeGarmo, Nurse Consultant  
iCare  
1555 N. Rivercenter Drive  
Suite 206  
Milwaukee, WI 53212

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.

2. Petitioner has been a member of the MA program administered by iCare since 2004.
3. Petitioner's provider, Metro Home Health, sent a request for prior authorization of personal care worker (PCW) services on January 23, 2014. The provider sought 23.5 hours per day of PCW services per week.
4. iCare approved this request until it could conduct an in-home assessment.
5. On February 3, 2014, iCare had Brightside Home Health conduct an in-home assessment of petitioner functional capacity. Following the assessment, iCare modified the approval to one hour per day.
6. Petitioner filed an appeal.

### 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).

It is petitioner's burden to establish the necessity of the requested time. In this case, the HMO appeared with its prior authorization specialist and provided a detailed presentation supporting its bases for the approved time. The documentation in the PCST was detailed with greatly detailed notes supporting the observations of the assessor. The witness from iCare also explained justifications for time allocations. The Department witness also explained that the Department reviewed the documentation and supported the one hour per day.

Petitioner, however, did not present anyone from her provider or the assessor who performed the PCST for Metro. There was no rebuttal testimony from any caregiver, home health specialist, or other health care provider. This was quite harmful to petitioner's case as it appears that the content of the PCST's were the basis for the difference of determination of needed time. That is, Metro found that time was needed for items that the iCare PCST found petitioner able to accomplish more independently. While petitioner undoubtedly feels that more time should be granted, there was no objective testimony from a person familiar with the PCST and related assessments. Metro did not appear to explain its observations or argue why the iCare PCST was wrong. Petitioner herself was unable to state with any specificity how much time is needed or otherwise adequately rebut the testimony of iCare. Again, it was petitioner's burden at the hearing to support the 3.25 to 3.5 hours per day as necessary. Petitioner and her provider simply failed to do so.

### **CONCLUSIONS OF LAW**

The HMO did not err in its determination of 1 hour per day as the appropriate PCW time.

**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 10th day of June, 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 June 10, 2014.

iCare  
Division of Health Care Access and Accountability