



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/156480

PRELIMINARY RECITALS

Pursuant to a petition filed April 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 hearing was held on May 20, 2014, at Waukesha, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly modified the Petitioner’s request for Personal Care Service (PCW) hours.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] |
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: OIG by letter

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County.

2. On January 23, 2014, Brightside Home Care submitted a prior authorization request on behalf of the Petitioner requesting 29.5 hours of PCW services per week for 53 weeks at a cost of \$25,100.88 with 6.25 hours per week of travel time for the PCW, for 53 weeks at accost of \$5,369.12. (Exhibit 2, pg.8)
3. On March 25, 2014, DHS sent the Petitioner a notice indicating that it had modified the request for services. (Exhibit 1; Exhibit 2, pgs. 57-60)
4. On that same date, DHS sent Brightside Home Care a notice of the same. (Exhibit 2, pgs. 61-62)
5. Petitioner's father filed an appeal on Petitioner's behalf that was received by the Division of Hearings and Appeals on April 1, 2014.
6. Petitioner is a 12-year-old child with Angelman's syndrome. (Testimony of Petitioner's father; Exhibit 2, pg. 23)
7. Due to the Angelman's syndrome, the Petitioner suffers from cognitive delays, speech delays/impairment, poor gross motor skills, limited fine motor skills, delays in social development and sleep disturbances. (Testimony of Petitioner's father)
8. Petitioner goes to school from 8:00 a.m. to 3 p.m. (Exhibit 2, pg. 21; Testimony of Petitioner's father)

DISCUSSION

Personal Care Services are a covered service by Medicaid. They are defined 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. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care." *Wis. Admin. Code DHS §107.112(1)(a)*.

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under *Wis. Admin. Code DHS §107.11(2)*, that are needed to treat a recipient's medical condition or to maintain a recipient's health. *Wis. Admin. Code DHS §107.112(b)*

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

"In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;

8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)€

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient’s illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient’s symptoms or with prevention, diagnosis or treatment of the recipient’s illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient’s diagnoses, the recipient’s symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient’s family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

Brightside Home Care, on behalf of Petitioner, requested 29.5 hours per week of Personal Care Worker (PCW) hours, with 6.25 hours per week travel time for the PCW. According to the letter from the Department of Health Services, Office of the Inspector General, DHS approved 10.5 per week of PCW hours with 6.25 hours per week of travel time for the PCW.

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, Brightside Home Care, completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located on the Forward Health website: <https://www.forwardhealth.wi.gov/WIPortal>, under topic number 3165.

The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table, which is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165*. A copy of the table was also attached to the OIG letter, Exhibit 3, attachment 9.

In general seven activities of daily living (ADLs) are reviewed: 1) Bathing, 2) Dressing, 3) Grooming, 4) Eating, 5) Mobility, 6) Toileting, and 7) Transfers. In addition, Medically Oriented Tasks (MOTs), such as setting up medications, are also examined.

Bathing

The letter from OIG (Exhibit 3) indicated that DHS allocated the maximum allowable time for bathing: 30 minutes per day, 7 days a week for a total of 210 minutes per week.

Dressing

The maximum time allowed by the Personal Care Activity Time Allocation Table (PCTAT) is 10 minutes per episode of dressing. (Exhibit 3, Attachment 9) The instructions for the personal care screening tool included in Exhibit 3, attachment 10, indicates that one episode of dressing is included in the time for bathing. (In theory, this means that 10 of the thirty minutes is allowed for dressing and the remaining 20 minutes is for getting the patient undressed, in the tub, washed off, out of the tub and dried off.)

OIG allowed additional time for dressing, one episode per day, 20 minutes per day, two days a week, because the PCW is only scheduled to be in the home for a second period of time on Saturday and Sunday mornings. Given the PCW schedule that was attached to the Prior Authorization request, this does not seem unreasonable. (See Exhibit 2, pg. 22)

Grooming

The OIG allowed time for nine episodes of grooming, 15 minutes per episode for a total of 135 minutes per week: once per day – 5 days a week and twice per day, 2-days per week because of the PCW's schedule. This is the maximum time allowed by the PCTAT.

Eating

The OIG did not allow any time for eating, because the Petitioner is able to feed herself. The OIG consultant viewed the Petitioner's tendency to overstuff her mouth with food as an issue with portion control or merely playing with her food. However, the Petitioner's father testified credibly that due to her Angelman's Syndrome, the Petitioner will overstuff her mouth, particularly when she likes a particular food. As such, she needs constant supervision to make sure she puts appropriate amounts of food in her mouth and does not choke. This is not an issue of whether the Petitioner will have 3 ounces of chicken for dinner or 12 ounces of chicken for dinner; it is a safety issue related to how much she is putting in her mouth and trying to swallow at one time.

Per the PCST instructions a person who requires constant supervision and physical intervention to ensure completion of the eating task, is at level "D" assistance. The PCTAT indicates that 20 minutes per episode is allowable for a person at level "D" assistance.

Given that the PCW is in the home in the evenings five days per week and morning and evenings on the weekends, that would be 9 episodes of eating. Thus, the time allowable for eating would be 180 minutes per week.

Mobility

The OIG did not allow any time for mobility, because the PCST indicated that Petitioner only needed assistance navigating the stairs that lead up to her apartment. Petitioner's father confirmed that the Petitioner needs assistance getting up and down the stairs. Petitioner's father also testified that while the Petitioner is physically capable of moving about her apartment, she does not have the coordination or

awareness to navigate around obstacles and so, needs intermittent supervision when walking through her apartment. Based upon the testimony of Petitioner's father, the Petitioner is at level "B" assistance. The PCTAT does not allow time for mobility for individuals at this level of assistance.

It should be noted that, although it seems senseless to have the PCW at the top of the stairs doing nothing but staring at the Petitioner at the bottom of the stairs, watching Petitioner struggling to get up the stairs or watching the Petitioner fall down the stairs, the PCST instructions do not normally allow for assistance up or down the stair case leading to Petitioner's apartment, because that is outside of the member's living environment. (See Exhibit 3, pg. 40)

Based upon the foregoing, it is found that the OIG correctly disallowed time for Mobility.

Toileting

The OIG did not allow time for toileting, stating that Brightside Home Care did not request time for this task. However, the PCST indicates that the Petitioner needs assistance to use the toilet and/or change a personal hygiene product two times per day and that the Petitioner is incontinent at night, needs hygiene products changed, and perineal care. (See Exhibit 3, attachment 4, pg. 3 of 6)

Petitioner's father testified that the Petitioner is not fully potty trained and that although she will indicate the need to use the bathroom, she needs assistance wiping and getting cleaned up. Petitioner's father testified that during the week, the Petitioner needs assistance with toileting once in the morning when she wakes up, once in the afternoon when she gets home from school and then again at bed time. The Petitioner's father also testified that the Petitioner wears a pull-up to bed and so, needs assistance changing the wet pull-up and getting cleaned up in the morning.

According to the PCST instructions, this places the Petitioner at assistance level "D" at some times and level "E" for when she needs assistance with incontinence care. The PCTAT allows ten minutes per episode of toileting assistance at level "D" and 15 minutes per episode for level "E".

Given the PCW schedule provided with the prior authorization request that shows the PCW in the home from 3:00 to 7:00 p.m. Monday through Friday; 8:00 a.m. to 10:00 a.m and 7:00 p.m. to 9:30 p.m. on Saturday and Sunday, it is appropriate to approve:

2 episodes per day x 10 minutes x 5 days = 100 minutes per week for the Monday through Friday schedule

1 episode per day x 10 minutes x 2 days = 20 minutes for Saturday / Sunday bedtime toileting assistance

1 episode per day x 15 minutes x 2 days = 30 minutes per week for Saturday / Sunday incontinence care

Thus, in total, 150 minutes per week is allowable for assistance with toileting the Petitioner.

Transfers and Medically Oriented Tasks

It is undisputed that the Petitioner is generally independent with transferring herself from one surface to another. Petitioner's father also indicated that the Petitioner did not have any medically oriented tasks that required the assistance of the PCW. As such, the OIG correctly disallowed time for these tasks.

Total time for ADLs

Totaling the allowable time we have:

1. Bathing: 30 minutes per day x 7 days	210 minutes per week
2. Dressing: 20 minutes per day, 1 x per day, x 2 days	40 minutes per week
3. Grooming: 15 minutes per episode x 9 episodes	135 minutes per week
4. Eating: 20 minutes per episode x 9 episodes	180 minutes per week
5. Mobility: 15 minutes per day, 2x per day x 7 days	210 minutes per week
6. Toileting: See above	150 minutes per week
7.	
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Total:	925 minutes per week

Incidental Cares

Per the on-line Provider Handbook, topic 3167, additional time may be allocated for incidental cares, such as light meal preparation (i.e. cutting up food), incidental laundry, or light cleaning after bathing or grooming Petitioner. For an individual who does not live alone, time equal to 1/4 of the time it actually takes to complete Activities of Daily Living (ADLs) and Medically Oriented Tasks (MOTs) may be allocated.

The actual time needed to complete Petitioner's ADLs was 925 minutes. (See above) One fourth of 925 minutes is 231.25 minutes. So, Petitioner may receive an additional 231.25 minutes per week for incidental tasks.

Behaviors

It is undisputed that due to the Angleman's syndrome, the Petitioner exhibits behaviors that can interfere with her cares, such as hitting, kicking, spitting, hair pulling and yelling. Petitioner's father indicated that Petitioner exhibits these behaviors frequently and has difficulty with transitions. Per the on-line Provider Handbook, topic 4621, time equal to 1/4 of the time it actually takes to complete Activities of Daily Living (ADLs) may be allocated when there are behaviors that interfere with the provision of personal care services.

The actual time needed to complete Petitioner's ADLs was 925 minutes. (See above) One fourth of 925 minutes is 231.25 minutes. So, Petitioner may receive an additional 231.25 minutes per week to account for Petitioner's behaviors.

Totaling all of the time allowable for Petitioner we have:

925 minutes per week for ALDs
 231.25 minutes per week for incidental activities
 231.25 minutes for behaviors that interfere with care

 1387.5 minutes per week ÷ 15 minutes = 92.5 units per week

92.5 units per week = 23.125 hours per week

I note to the petitioner that his/her provider will not receive a copy of this Decision. In order to have the PCW hours approved, the petitioner must provide a copy of this Decision to Brightside Home Care. Then, Brightside Home Care must submit a *new* prior authorization request to receive the approved coverage.

CONCLUSIONS OF LAW

DHS did not correctly modify Petitioner's prior authorization request for PCW hours.

THEREFORE, it is

ORDERED

That Petitioner's provider is authorized to bill the Wisconsin Medicaid program for 23.125 hours (92.5 units per week) of personal care services per week with 6.25 hours per week of travel time for the PCW. **Petitioner's provider should submit a copy of this decision to Forward Health, along with its invoice/request for prior authorization, for the additional time allowed herein.**

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 9th day of June, 2014.

\sMayumi M. Ishii
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 9, 2014.

Division of Health Care Access and Accountability