



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████ ██████████
██
██

DECISION

MPA/156558

PRELIMINARY RECITALS

Pursuant to a petition filed April 3, 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 (DHCAA or Division) in regard to Medical Assistance (MA), a hearing was held on May 21, 2014, by telephone.

The issue for determination is whether the Division correctly denied a prior authorization request for personal care worker (PCW) services.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████ ██████████
██
██

Respondent:

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

By written submission of: Sharon Beck, RN BSN
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. She is certified for MA.
2. On January 30, 2014, a prior authorization request (#...050) was submitted on the petitioner's behalf by First Choice for 27.75 hours weekly of PCW services, beginning January 23, 2014. On

February 14, 2013, the Division issued written notice that it was denying the entire \$117,660.00 request.

3. The Division's basis for denial was that none of the requested hours was medically necessary. In particular, the Division indicates that physician notes declare that the petitioner's condition is stable, with normal range of motion in all joints. It was not clear to the Division as to why the petitioner needs physical assistance with self-care tasks.
4. The petitioner, age 21, resides with alone in the community. The petitioner has a diagnosis of cerebral palsy (spastic diplegia-lower extremities) and learning difficulty. She experiences variable fatigue, pain and stiffness in her hips and legs. The petitioner is overweight (203 pounds/41.6 BMI). She has functional limitations in the areas of endurance, balance, and occasional lower limb rigidity or involuntary movement. A physical therapist has recommended that the petitioner participate in a progressive home exercise program. The petitioner uses a walker.
5. A Personal Care Screening Tool (PCST) review was performed by a nurse from First Choice for the petitioner on January 23, 2014. The PCST results declared that the petitioner required PCW physical assistance with bathing daily, upper and lower body dressing twice daily, grooming twice daily, and toileting twice daily (she is not incontinent). She does not require assistance with eating. The PCST also noted that the petitioner requires physical assistance with mobility and transfers, and requires meal preparation services. The scoring on the PCST yielded a care needs result of 27.75 hours weekly.
6. A different screener evaluated the petitioner in June 2009, and concluded that the petitioner was independent with bathing, dressing, grooming, toileting, and transfers. The petitioner had a routine physical with Dr. H. [REDACTED] in October 2013. Notes from the physical state that the petitioner's only medication at the time was birth control and a rescue inhaler (as needed). The patient denied concerns or changes regarding problems with muscles, joints, or her back, and reported exercising three times weekly on a stationary bicycle. She was noted to have full range of motion with normal appearing joints, but did require assistance with positioning her legs. The petitioner had a routine follow-up appointment with [REDACTED] in February 2014, and reported tightness in her leg muscle. She was not taking medications for pain or spasticity, so Baclofen was prescribed to help with leg spasms. The extremities were noted to be stable.
7. Physical therapy notes from May 2013 state that the petitioner is "overall" able to don/doff clothing, but that she needs help "some days." The notes characterize her as a fall risk, and declare a decline in level of function consist with lower extremity pain. She was unable to stand unsupported for 30 seconds. Those notes also state that she is able to perform transfers with the use of her hands.
6. The petitioner does have grab bars, and a walker to assist her with ambulation. The petitioner requires the physical assistance of others for bathing, ambulation, to purchase and prepare her food, do laundry, clean her bedroom, and take/accompany her to medical appointments. The evidence does not support a finding that she requires physical assistance for eating, dressing, grooming, toileting, or transfers. These necessary services require 8 hours of time weekly.

DISCUSSION

Personal care worker service (PCW), as defined at Wis. Admin. Code §DHS 107.112(1), is an MA-covered service, subject to prior authorization after the first 250 hours per calendar year. Wis. Admin. Code §DHS 107.112(2) (May 2009). In determining whether to approve such a service request, the Division employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be a medical necessity, appropriate, and an effective use of

available services. *Id.* The Division argues that the authorization criteria have not been satisfied for the reason given in Finding #3 above.

The Department asserts that it has reduced the PCW time to the amount it believes is necessary to perform purely PCW tasks (zero). The petitioner contends that she needs all of the requested care time.

The state code does restrict MA-covered PCW tasks as follows:

(b) Covered personal care services are:

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(2)(b).

The petitioner's PT progress notes from 2011 onward reflect a worsening in her leg functioning after the 2009 screening, so this Judge was not comfortable in relying on that screening for evidence of lower extremity function. Through hearing testimony and May 2014 physical therapy progress notes, the petitioner established that she needs assistance with ambulation and bathing (fall risk). There is no medical evidence to support the need for help with upper extremity dressing or transfers. There is no evidence that she has tried dressing aids (for example, a sock aid) for lower body dressing. If she had tried them and was unsuccessful, I would have given consideration to lower body dressing time. There is also inadequate evidence of the need for grooming time. When asked why she needs help with grooming, the petitioner stated that she gets tired when standing in front of a mirror, particularly when doing her hair. It is not clear why she cannot get a countertop mirror and perform hair dressing tasks while seated.

I conclude that the petitioner requires the following daily times for activities of daily living (ADL) tasks: bathing – **30** minutes, dressing – zero minutes, grooming –zero minutes, eating – zero, mobility – **20** minutes, toileting – zero minutes, transfers - zero. (Changes from the Division’s position in bold.) The standard time-per-task amounts were used, and were taken from the Department’s *Personal Care Activity Time Allocation Table*, found in *ForwardHealth Update*, No. 2009-08. These amounts total 50 minutes daily, or 350 minutes weekly.

Time is needed for food purchase and preparation (the petitioner’s standing tolerance is a few minutes), cleaning the petitioner’s room, and taking her to medical appointments. The Division’s policy standard is to add no more than 33% of the ADL time to the authorization or services incidental to ADLs. *ForwardHealth Provider Online Handbook – Personal Care*. In this case, that would allow addition of 116 minutes weekly to the total. Thus, I will authorize the petitioner’s PCW time for the period of 8 hours weekly (350 minutes + 116 minutes = 466 minutes, divided by 60 minutes in an hour), beginning with the January 23, 2014 authorization request start date.

Note to Petitioner: Your provider will not receive a copy of this Decision. In order to have the service requested here, you must provide a copy of this Decision to First Choice Healthcare. The provider must then submit a new prior authorization request to receive the approved service.]

CONCLUSIONS OF LAW

1. The petitioner requires 8.0 PCW hours weekly for the current authorization period, beginning January 23, 2014.

THEREFORE, it is

ORDERED

That First Choice Home Health Care is hereby authorized to provide the petitioner with 8.0 PCW hours weekly for the period beginning January 23, 2014, and to submit its claim, along with a copy of this Decision and a new prior authorization request, to ForwardHealth for payment. In all other respects, the petition 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 23rd day of May, 2014

\sNancy J. Gagnon
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 23, 2014.

Division of Health Care Access and Accountability