



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

MPA/156563

PRELIMINARY RECITALS

Pursuant to a petition filed March 31, 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 telephone hearing was held on May 14, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the OIG has correctly modified the petitioner’s prior authorization request for personal care worker (PCW) hours.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

Respondent:

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

Written Appearance by: Cindy Zander 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:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. She is 46 years old and certified for MA. She lives at home with her family.

2. Petitioner is diagnosed with quadriplegia secondary to stroke, systemic lupus erythematosus with occasional flare-ups, Oglivie Syndrome, and obesity. Petitioner has a gastronomy tube for administration of medications.
3. Petitioner's functional limitations include bladder and bowel incontinence, paralysis, endurance, ambulation, and speech. She uses a wheelchair, which she is able to maneuver through the use of a joystick control.
4. On February 12, 2014, Independence First requested prior authorization (PA # [REDACTED]) on petitioner's behalf for 61.25 hours per week PCW services, and 14 hours per week for travel time for the PCW. By a notice dated March 4, 2014, the OIG modified the PA request and granted 52.5 hours per week PCW services; the travel time was approved as requested.

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 this case the OIG testified that it awarded the maximum amount of time allowed *per day* under the PCST and adjustments made by the reviewer for bathing (30 minutes), dressing upper and lower body (20 minutes), grooming (30 minutes), toileting assistance (60 minutes), eating (60 minutes), medically oriented tasks (100 minutes), services incidental to task (75 minutes), and 75 additional minutes for medical conditions (25% of the total ADL's/MOT's).

In reviewing the PCST as completed by the provider, I can see how the OIG awarded what it did, and technically I am reviewing their determination. However, at hearing the type of assistance required for each of petitioner's ADLs was reviewed through the testimony of her mother and [REDACTED] [REDACTED] both of whom have provided PCW services for the petitioner. The testimony explained that petitioner requires more than the allotted time for toileting, dressing, bathing and eating. Ms. [REDACTED] explained that petitioner is entirely disabled, referring to her as "total care."

Petitioner's representatives testified that 52.5 hours weekly are insufficient, that her caregiver cannot provide necessary personal cares and supportive home cares in that amount of time. The problem is that petitioner provided nothing to substantiate her argument. She provided no schedule or other record of cares provided to her. As a result, I have no way of determining how many hours per week are required. I thus must affirm the number of hours determined by the agency.

I suggest that petitioner keep a daily record of cares provided and time needed for them. If it is more than 52.5 hours per week, she can present that record to the agency to request an increase.

CONCLUSIONS OF LAW

The respondent correctly modified petitioner's prior authorization (PA # [REDACTED]) to approve 52.5 hours per week PCW services, and 14 hours per week in travel time.

THEREFORE, it is

ORDERED

That 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 18th day of July, 2014.

\sPeter McCombs
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 July 18, 2014.

Division of Health Care Access and Accountability