



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

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In the Matter of

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

DECISION

MPA/156647

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 04, 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 April 24, 2014, at West Bend, 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 Worker (PCW) service hours.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

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█  
█

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 Washington County.

2. On February 10, 2014, Independence First submitted, on behalf of the Petitioner, a prior authorization request for PCW service hours; 38.5 hour per week of active service; 24 additional hours to be used PRN (as needed) for acute illness; and 14 hours per week of travel time for the PCW. The request was for 53 weeks of service, at a cost of \$54,726.75. (Exhibit 4, pg. 6)
3. At some point, the request for 24 hours PRN was withdrawn. (Exhibit 4, pg. 65)
4. On March 17, 2014, DHS sent the Petitioner a notice indicating that the request for services was modified. (Exhibit 4, pgs. 60-63)
5. On March 17, 2014, DHS sent Independence First a notice indicating that the request for services was modified from 38.5 hours per week to 34.95 hours per week for active care, but that the 14 hours per week of travel time for the PCW was approved. (Exhibit 4, pgs. 64 and 65)
6. Petitioner is nine years old and has diagnoses of Autism Spectrum Disorder, Pervasive Developmental Delays, Urinary Incontinence, Fecal Smearing, Expressive Language Disorder, Intellectual Disability and Emotional Disturbance. (Exhibit 4, pgs. 18 and 19)
7. Petitioner functions at the level of an 18-24 month old, is in the process of toilet training and exhibits aggressive behaviors, including self-injurious behaviors that interfere with the provision of cares, because she is regimented and ritualistic. (Exhibit 4, pg. 18 and pg. 23)
8. Petitioner attends school three days per week. (Exhibit 4, pgs. 12 and 19)

### **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)(e)

“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.

Independence First, on behalf of Petitioner, requested 38.5 hours per week of active PCW service hours and 14 hours per week of travel time for the PCW. According to the letter from the Department of Health Services, Office of the Inspector General, DHS approved the 14 hours per week of travel time for the PCW, but modified the request for active PCW service hours from 38.5 to 34.5 hours per week.

Petitioner’s mother, on her behalf, requests 3525 minutes / 58.58 hours per week of PCW services. (Exhibit 2)

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, Independence First, 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.

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), if any, are examined.

The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table. This chart can also be found at the aforementioned website. A copy of the table was included as attachment 10 of the OIG letter, Exhibit 3, pg.44.

The Personal Care Activity Time Allocation Table is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165.*

#### Bathing

DHS allowed the maximum amount of time permitted by the Personal Care Activity Time Allocation Table:

30 minutes per day x 7 days a week = 210 minutes per week

#### Dressing

Per page 4 of the PCST instructions, one episode of dressing is included in the 30 minutes allowed for bathing. The PCST instructions can be found on-line at:

<http://www.dhs.wisconsin.gov/forms/F1/F11133a.pdf>

The DHS allowed the maximum amount of time permitted for the second episode of dressing, upper and lower body:

20 minutes per day x 7 days a week = 140 minutes per week

#### Grooming

DHS allowed the maximum amount of time permitted by the Personal Care Activity Time Allocation Table:

15 minutes per episode x 2 episodes per day x 7 days a week = 210 minutes per week

#### Eating

DHS allowed the maximum amount of time permitted by the Personal Care Activity Time Allocation table for eating, 20 minutes per episode:

Breakfast – 20 minutes x 7 days a week = 140 minutes

Lunch – 20 minutes x 4 days a week = 80 minutes (Petitioner is at school 3 days a week)

Dinner – 20 minutes x 7 days a week = 140 minutes

Total Time = 360 minutes per week

Mobility

The PCST indicated that the Petitioner needs assistance at level B, in order to move about her home safely, meaning she needs intermittent supervision or cueing. Specifically, it stated that the Petitioner might need guidance by the elbow to avoid obstacles and to stay on task. (Exhibit 4, pg. 13)

According to the Personal Care Activity Time Allocation Table, not PCW service hours are allowed for individuals who are at level B. Thus, DHS correctly disallowed time for this task.

Toileting

The PCST indicated that the Petitioner needs assistance at level D because she requires assistance with toileting 5 times per day, as she is in the midst of toilet training and wears pull-ups. (Exhibit 4, pgs. 13 and 14)

DHS allowed the maximum time for this task:

10 minutes per episode x 5 episodes per day x 7 days a week = 350 minutes per week.

The PCST indicated that Petitioner needs assistance with incontinence once per day at level E when she has a bowel movement. DHS allowed the maximum amount of time for this task, which is 15 minutes:

15 minutes per episode x 1 episode per day x 7 days a week = 105 minutes

Total time = 455 minutes per week

Transfers

The PCST indicated that the Petitioner needs assistance at level B for transfers because she needs intermittent supervision or cueing, i.e. redirection when getting up from a chair, because the chair has not been pushed far enough back from a table. (Exhibit 4, pg. 14)

The Personal Care Activity Time Allocation Table indicates that no PCW service hours are allowed for individuals who require level B assistance. As such, DHS correctly disallowed time for this task.

Medically Oriented Tasks

The PCST indicated that no PCW service hours were needed for medically oriented tasks (MOTs), because the Petitioner's parents will provide all medications. (Exhibit 4, pg. 14) In addition, the physician's order in the Home Health Certification and Plan of Care contains no order for PCW services related to MOTs. (Exhibit 4, pgs. 18 and 19)

## IN SUMMARY:

The actual time needed to completed Petitioner's ADLs is as follows:

1. Bathing;	210 minutes per week
2. Dressing	140 minutes per week
3. Grooming	210 minutes per week
4. Eating	360 minutes per week
5. Mobility	zero minutes per week
6. Toileting	455 minutes per week

7. Transfers	zero minutes per week
8. MOTs	zero minutes per week
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	1375 minutes per week

Incidental Tasks

The PCST indicated that the PCW will be providing services incidental to ADLs. (Exhibit 4, pg. 15)

Per the on-line Provider Handbook, topic 3167, for individuals who do not live alone, time equal to ¼ of the time it actually takes to complete Activities of Daily Living (ADLs) may be allocated for incidental cares such as changing and laundering linens, light cleaning in areas used during personal care activities, eye glass care and hearing aids, meal preparation, food purchasing and meal service.

One fourth of 1375 minutes is 343.75 minutes.

Behaviors

Both the PCST and the physician's order indicate that the Petitioner has behaviors that interfere with the provision of her cares. Petitioner is described as being regimented and ritualistic and prone to outbursts directed at herself and others. Petitioner has a history of inflicting injury upon herself and will scream, cry, scratch and pinch daily. (Exhibit 4, pgs. 15, 18, 19 and 23) Petitioner has been noted to engage in self-stimulation at school, playing with her hair, playing with a bracelet or rubbing her genitals. (Exhibit 4, pg. 42)

Per the on-line Provider Handbook, topic 4621, time equal to ¼ 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. In this case, that would be an additional 343.75 minutes per week.

Totaling all of the time allowable for Petitioner we have:

1375 minutes per week for ADLs
343.75 minutes per week for incidental activities
343.75 minutes per week for behaviors that interfere with services

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2062.5 minutes per week ÷ 60 = 34.375 hours per week

DHS approved 34.5 hours of personal care service hours per week.

Petitioner's Personal Care Services List (Exhibit 2)

In Exhibit 2, the Petitioner's mother and PCW submitted a list of Petitioner's activities of daily living and how much time they believe the tasks require to complete. However, the amount of time requested in Exhibit 2 (58.58 hours per week) far exceeds what was ordered by the physician in the Home Health Certification and Plan of Care (38.5 hours per week).

According to page 1 of the PCST instructions, the prior authorization request is limited by what is ordered by a physician in the plan of care. This instruction is based upon Wis. Admin. Code §DHS 107.112(1)(a) which states that personal care services, "shall be provided upon written orders of a physician... according to a written plan of care". In addition, Wis. Admin. Code §DHS 107.112(4)(c) specifically lists "Person care services not documented in the plan of care" as non-covered services.

As such, time significantly beyond what was in the physician's order may not be granted prior authorization, nor can time be authorized for tasks not listed in the physician's order.

It should also be noted that some of the tasks listed in Exhibit 2, such as cleaning a bedroom, vacuuming and dusting the main area of the home and washing dishes are not considered covered personal care services under Wis. Admin. Code §DHS 107.112(1)(b):

**(1) COVERED SERVICES.**

**(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.

Based upon all of the foregoing, it is found that the Petitioner/Petitioner's mother has not justified the need for PCW service hours beyond what was approved by DHS.

**It should be noted that the Petitioner can ask for the PCST to be redone, if her mother and she feel Independence First failed to include tasks or designated an incorrect level of assistance**

**I note to the petitioner that her provider, Independence First, will not receive a copy of this Decision.**

**CONCLUSIONS OF LAW**

DHS correctly modified the Petitioner's prior authorization request for PCW service hours.

**THEREFORE, it is**

**ORDERED**

That the petition 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 17th day of June, 2014.

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\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 17, 2014.

Division of Health Care Access and Accountability