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

In the Matter of

██████████ ██████████ ██████████
c/o ██████████ ██████████
██████████
██

DECISION

MPA/156851

PRELIMINARY RECITALS

Pursuant to a petition filed April 14, 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 28, 2014, at Milwaukee, Wisconsin. At the requests of the petitioner, the record was held open for 25 days for the submission of additional information.

The issue for determination is whether the Department, by its agents, correctly modified the petitioner's requested personal care worker hours from 45.5 to 32.25 per week.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████ ██████████ ██████████
c/o ██████████ ██████████
██████████
██

Respondent:

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

Written Appearance By: Sharon Beck, R.N., Nurse Consultant
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ██████████) is now a 54 year old resident of Milwaukee County who receives Medical Assistance (MA) and lives in a private residence with his family. He carries diagnoses of Intellectual Disability and Grand Mal Seizures. His seizures are well-controlled with

medications at present, and occur at a frequency of far less than once per week. According to the clinical records, his last seizure prior to the instant PA Request occurred in November, 2012. See, Exhibit #1, at p. 7, paragraph 2. He has bowel/bladder incontinence, contractures, endurance deficits, and limits to his abilities to ambulate and speak. He is up as tolerated, and routinely uses a walker to assist with ambulation. He experiences cognitive delays. He can communicate his needs verbally with difficulty, but can be understood. He wears corrective glasses. He has a walking regimen of three times per day. He is not physically resistant to any cares.

2. Assistance of a personal care worker (PCW) with walking exercises is not a covered PCW level service.
3. The petitioner requires assistance to bathe daily, and he is unable to participate in the task. He requires physical assistance from another to dress and undress upper and lower extremities, and he is unable to participate in these tasks. He requires physical assistance to groom himself twice per day. He has a history of choking while eating, and must be monitored at mealtimes. He requires the assistance of a gait belt and physical assistance during all transfers. He requires assistance to ambulate for extended periods. He needs physical assistance toileting at least twice per day, and incontinence cares at least twice per day. He requires assistance with medication setup and administration.
4. The petitioner does not possess any other medical conditions that are considered statistically rare in the general population that make his cares more time consuming.
5. The petitioner attends a day program Monday – Friday from 9:00 A.M. to 2:00 P.M. He eats lunch while there. In addition, he also receives 6 hours per day of supportive home care (SHC) from providers affiliated with, and reimbursed by, a MA Waivers program known as IRIS, (I Respect, I Self-Direct). These SHC services are aimed at social activities, cleaning, shopping and assistance at medical appointments. Thusly, he receives 11 hours per day of supervision and assistance from these two sources on weekdays, and 6 hours per day on weekends; all while living full time with other family members in a private residence.
6. Last year, the petitioner’s personal care worker (PCW) services provider, Independence First, submitted a February 25, 2013, prior authorization (PA) request on behalf of the petitioner to the Office of the Inspector General (OIG) requesting approval for 6.5 hours of personal care worker (PCW) hours per day, 7 days per week, for 53 weeks, in addition to 24 hours per year to be used on a PRN (as needed) basis, and 14 hours per week of travel time for the PCW.
7. OIG sent a March 27, 2013 notice to the petitioner modifying and reducing his PA request for PCW from 6.5 to 5.5 hours per day, seven days per week, as the requested level was not medically necessary. The petitioner appealed to DHA in DHA Case No. MPA/149334, filed on May 10, 2013.
8. A hearing was held on June 18, 2013. The record was held open by then-assigned administrative law judge Gary Wolkstein, for documents to be submitted to the Office of the Inspector General (OIG) for a reconsideration decision by OIG nurse consultant [REDACTED].
9. After reviewing the new evidence, nurse consultant [REDACTED], sent a July 30, 2013 reconsideration statement to DHA and to the petitioner’s sister as his representative. In that letter, Mr. [REDACTED] stipulated that based upon the new information, OIG reversed petitioner’s PA reduction of PCW hours and was approving the requested 6.5 hours per day, seven days per week, of PCW, provided that petitioner’s provider, Independence First, complete and submit to OIG an amended and updated Plan of Care orders that have been signed by the physician.
10. On October 4, 2013, ALJ Wolkstein issued a final Decision directing the Department’s fiscal agent, ForwardHealth, to approve PCW services at the 6.5 hours per day, seven days per week, level.

11. On February 24, 2014, Independence First submitted a new Prior Authorization Request to the OIG, with a service begin date of April 24, 2014, again requesting approval for 6.5 hours per day, seven days per week, i.e., 45.5 hours (182 units) per week of personal care worker (PCW) hours for 53 weeks, in addition to 24 hours per year (96 units) to be used on a PRN (as needed) basis, and 14 hours per week (56 units) of travel time for the PCW. The provider also submitted a Personal Care Screening Tool (PCST) performed in the Department's requisite manner, which concluded that the petitioner requires only 32.25 hours per week (129 units) of cares. The requesting provider, Sherry Lewis, also submitted a Personal Care Addendum in support of the amount of 6.5 hours per day, seven days per week, as requested, due to additional time needed by this recipient in her opinion.
12. On March 24, 2014, the Department's OIG assigned nurse consultant, again modified the request, as in 2013, to 32.25 hours per week of PCW services, while approving the as needed hours per annum requested, and the travel hours requested per week.
13. On April 14, 2014, the petitioner again filed an appeal with the Division of Hearings & Appeals in DHA Case No. MPA/156851, again contesting the OIG's action to reduce his PCW care hours from 45.5 per week to 32.25 per week.
14. On May 2, 2014, OIG nurse consultant Sharon Beck, R.N., submitted a *Summary Letter* fully setting forth the OIG decision rationale and affirming that the PCST result of 129 units (i.e., 32.25 hours per week as each unit is 15 minutes of time) was corroborated by the clinical documentation submitted and by the petitioner's most recent Long Term Care Functional Screen Report. See, Exhibit #1, attachments 1, 2, 3 & 4.

DISCUSSION

Personal care services are "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." Wis. Admin. Code §DHS 107.112(1)(a). Covered services include 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(b).

Personal care workers can spend no more than one-third of their time performing housekeeping activities, or one-fourth when the recipient lives with family. Like all medical assistance services, PCW services must be medically necessary and cost effective. Wis. Admin. Code, §DHS 107.02(3)(e)1 and 3.

To determine the numbers of PCW hours, providers are required by the DHCAA to use the Personal Care Screening Tool (PCST), a tool meant to consistently determine the number of hours required by each recipient. The screening tool allots a specific amount of time in each area the recipient requires help,

which the DHCAA's reviewer can then adjust to account for variables missing from the screening tool's calculations.

The primary reasons for reducing the requested hours had to do with mobility assistance; and that the petitioner was slower to perform tasks even with assistance because of his cognitive deficits. The PCST noted that petitioner requires three times daily assistance with a walking regimen. The petitioner has an unsteady gait and uses a walker.

I conclude that the reduction in PCW hours was appropriate. I do not doubt that the providers assist the petitioner with general mobility from time to time during service hours, but the three times per day walking exercise regimen is not a covered PCW service. MA services and equipment are not to be provided for family or caretaker convenience. See, Wis. Admin. Code, §DHS 101.03(96m)(b)7. Assisting petitioner with a walking exercise regimen three times per day is essentially a convenience for his family and his caretakers. This gentleman is receiving supervision and assistance, much of the cost of which is covered by MA and its sub-programs, for 15 ½ waking hours per day on most days of the week. In addition, while I realize that this decision is at odds with the prior outcome in October, 2013 on essentially the same issue in DHA Case No. MPA-149334, I believe that the judge and the post-hearing nurse consultant in that case did not consider the import of a critical piece of evidence outlined here by Nurse Consultant Beck. I.e., *additional time to complete tasks is not appropriate or allowed under the Personal Care Screening Tool protocols unless there are rare medical conditions that present unique challengers for caregivers*, and the rare conditions cause it to be more time consuming for the PCW to perform. This policy statement, which does not appear to have been raised previously, states as follows:

Medical Conditions Making Personal Care Worker Assistance with Activities of Daily Living and Medically Oriented Tasks More Time Consuming

The selection for "medical conditions" is reserved for applicants with long-term, rare medical conditions that present unique challenges for caregivers and makes assistance with ADL tasks more time consuming for the PCW to perform. The rare medical condition must affect performance of cares for the applicant and be rarely diagnosed in the population using PC services long term in the home (e.g., severe combined immunodeficiency disease, ICD-9-CM code 279.2, conjoined twins, ICD-9-CM code 759.4; and Edwards' syndrome, ICD-9-CM code 758.2). Additionally, the medical condition must meet one of the following criteria:

- In order to assist with an ADL, the PCW must use one or more pieces of protective equipment prescribed for the member (e.g., helmet or back brace).
- When performing an ADL, the PCW is required to adhere to applicant-specific precautions (as documented in the POC) in order to accommodate the rare medical condition.

Wisconsin Medicaid Personal Care Handbook, § Topic #11497, "Prior Authorization: Personal Care Screening Tool – Parameters for Making Selections". See, on the internet at: <https://www.forwardhealth.wi.gov/WIPortal/Online%20Handbooks/Display/tabid/152/Default.aspx?ia=1&p=1&sa=47&s=3&c=565&nt=Parameters+for+Making+Selections>

As noted by Nurse Beck, Intellectual Disability, formerly called mental retardation, is not a rare medical condition in the population at large and does not meet or fit this criteria for slower service provision at all. See, Exhibit #1, at page. 3, paragraph 1.

I fully concur with the Division's rationale and result here. PCW services are not covered for assisting with a 3 times per day walking regimen; and the petitioner's cognitive deficit is not a rare medical condition that supports additional time to complete daily tasks beyond the Personal Care Screening Tool

normatives. Finally, he already receives 6 hours per day of SHC from IRIS providing for much of his housekeeping and chores needs, and he is not entitled to duplicate housekeeping under the 25% rubric described on page 3, above. The instant appeal is dismissed, and the DHCAA modification is sustained at 32.25 per hours of PCW services, plus the addition PRN and travel sums identified in Finding of Fact #11.

CONCLUSIONS OF LAW

The DHCAA correctly reduced petitioner's PCW service hours from 45.5 hours to 32.25 hours per week.

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 8th day of July, 2014

\sKenneth D. Duren, Assistant Administrator
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 8, 2014.

Division of Health Care Access and Accountability