



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[REDACTED]
c/o [REDACTED] & [REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/157062

PRELIMINARY RECITALS

Pursuant to a petition filed April 17, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Community Living Alliance ["CLA"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on June 17, 2014.

The issue for determination is whether it was correct to reduce petitioner's Personal Care Worker ["PCW"] time from 4.5 hours per day to 3.25 hours per day.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] (not present at June 17,
2104 Hearing)
c/o [REDACTED] & [REDACTED]
[REDACTED]
[REDACTED]

Represented by:

[REDACTED] & [REDACTED], petitioner's
parents & Legal Guardians
[REDACTED]
[REDACTED]

Respondent:

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

By: Corinna Engel, Registered Nurse ["RN"], Medicaid Programs Supervisor
Personal Care, CLA

Community Living Alliance
1414 MacArthur Road
P.O. Box 8028
Madison, Wisconsin
53708-8028

OTHER PERSONS PRESENT:

██████████, Lead Administrative Assistant, CLA
██████████, RN, Personal Care Coordinator, CLA
██████████, Operations Manager, CLA

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (26 years old) is a resident of Dane County, Wisconsin.
2. Petitioner has a diagnosis of autism; he has cognitive impairments, limited cognitive and communication skills, severe sensory integration disabilities, significant severe language disabilities, severe disabilities in social perception and judgment, and is resistive to cares and uncooperative.
3. By a letter dated December 6, 2013 CLA reduced petitioner's PCW time from 4.5 hours per day to 3.25 hours per day effective January 5, 2014; CLA made the reduction because it determined that petitioner needed no time for toileting (except for assistance with washing of hands) and CLA also allowed no time for cleaning of medical equipment.
4. Petitioner and his parents were out of town for an extended period of time so the reduction in PCW time did not impact petitioner until April 10, 2014.
5. In letters dated May 14, 2014 and June 2, 2014, petitioner's Primary Care Physician ["PCP"] affirms that petitioner, whom he has seen for the last 4 years, requires PCW time up to 4.5 hours per day 7 days per week for cares that include toileting and cleaning equipment.
6. In a letter dated May 22, 2014, petitioner's neurologist, who has followed petitioner since 1995, affirms that petitioner needs physical assistance cleaning himself after using the bathroom and requires assistance cleaning medical equipment.
7. Petitioner's mother states that she must physically assist petitioner in cleaning himself (not just washing hands) after he uses the bathroom and that petitioner requires assistance from another person to clean his medical equipment.

DISCUSSION

By law, MA pays only for medically necessary and appropriate health care services when provided to currently eligible MA recipients. Wis. Admin. Code § DHS 107.01(1) (February 2014); See also, Wis. Stat. §§ 49.46(2) & 49.47(6)(a) (2011-12). In the case of PCW services, MA pays only for 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) (February 2014). Further, some medically oriented tasks may be covered as PCW services if the PCW has received special training in performing the task. Wis. Admin. Code §§ DHS 107.112(2)(b) & 107.11(2)(b)1. (February 2014). PCW services must be performed according to a written plan of care developed by a Registered Nurse ["RN"]. The plan must be based on the RN's visit to the recipient's home and must be

reviewed by the RN at least every 60 days via a home visit. Wis. Admin. Code §§ DHS 107.112(3)(b) & (c) (February 2014).

In addition to the medically oriented tasks allowed for PCW's that have received special training, the only PCW services covered are 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(1)(b) & (4)(f) (February 2014).

On October 15, 2013 CLA completed a *Personal Care Screening Tool* ["PCST"] concerning petitioner. The RN who completed the PCST testified that petitioner's mother told her that petitioner toilets himself and just needs help with washing hands. This was recorded in the PSCT¹ and, consequently, CLA reduced petitioner's PCW hours to reflect this.

This matter must be decided by a preponderance of the credible evidence in the record of this matter. Wis. Admin. Code § HA 3.09(1) & (4) (February 2013). The preponderance of the credible evidence in the record of this matter, as detailed in the above *Findings of Fact*, is that petitioner needs physical assistance cleaning himself (not just washing his hands) after using the bathroom. Petitioner's mother testified that this goes well beyond simply hand washing and that the RN who completed the October 15, 2013 PCST must have misunderstood her or not heard her. The testimony of petitioner's mother is credible and is supported by letters from petitioner's PCP and neurologist.

CLA allowed no time for cleaning of medical equipment because it states that cleaning of medical equipment is an allowed PCW activity only if the equipment is related to personal care services. However, CLA cites no legal authority for this. Further, PCW activities include medically oriented activities. Wis. Admin. Code § DHS 107.112(1)(a) (February 2014). Moreover, written state policy specifically provides that "[l]ight cleaning in essential areas of the home used during personal care service activities including cleaning medical equipment" is an allowed PCW activity. See, *ForwardHealth* online handbook Topic #2476 found at:

<https://www.forwardhealth.wi.gov/WIPortal/Online%20Handbooks/Display/tabid/152/Default.aspx?ia=1&p=1&sa=47&s=2&c=61&nt=Assistance+with+Services+Incidental+to+Activities+of+Daily+Living>

Therefore, based on all of the above, it was not correct to reduce petitioner's PCW time from 4.5 hours per day to 3.25 hours per day.

CONCLUSIONS OF LAW

For the reasons explained above, it was not correct to reduce petitioner's PCW time from 4.5 hours per day to 3.25 hours per day.

NOW, THEREFORE, it is

ORDERED

That this matter be REMANDED to CLA, that CLA not reduce petitioner's PCW time from 4.5 hours per day to 3.25 hours per day, that CLA restore petitioner's PCW time to 4.5 hours per day retroactive to April 10, 2014, and that CLA amend petitioner's *Nursing Plan of Care* to show that petitioner requires assistance with toileting and requires assistance with cleaning of medical equipment. All of this must be completed within 10 days of the date of this *Decision*.

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 19th day of June, 2014

\sSean P. Maloney
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 19, 2014.

Dane County Department of Human Services
Bureau of Long-Term Support
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