



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/157291

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 30, 2014, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to deny Medical Assistance (MA) authorization for personal care worker (PCW) services, a hearing was held on June 4, 2014, by telephone.

The issue for determination is whether the DHCAA correctly determined no need for PCW services.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Written submission of Robert Derendinger, Nurse Consultant

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a 36-year-old resident of Milwaukee County who receives MA.
2. Petitioner has Type I, insulin-dependent diabetes, neuropathy related to the diabetes, chronic pain, post-traumatic stress disorder, and manic depressive disorder. She has extreme blood sugar fluctuations and is subject to seizures.
3. On February 21, 2014, Trinity Home Healthcare requested authorization for 36 hours per week PCW services. After reviewing petitioner's medical records the DHCAA denied the request.
4. Medical records show that petitioner does not have range of motion restriction or instability, no muscle weakness, normal reflexes, normal gait, and intact sensory testing, with mild edema in her legs.

5. Petitioner's husband has been her PCW provider.

### 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. 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.

The DHCAA now uses the Personal Care Screening Tool, a computer program it believes will allow it 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 DHCAA denied the request in this case because the petitioner's medical records do not match the conditions stated in the screening tool provided by Trinity Home Healthcare. Indeed, the medical report from petitioner's April, 2014 visit at the Lubsey Medical Center does not describe a person in need of assistance with daily living activities. Other than mild numbness in her lower extremities, petitioner is not noted to have any restrictions in movement or strength.

Petitioner's biggest complaint is that she does not understand how to use her insulin pump, but assistance with medical equipment is not a PCW task. Petitioner and her husband described the types of tasks provided to petitioner, and they were largely supervisory, such as making sure that petitioner gets into the tub safely, and supervising her medications. The need for actual hands-on assistance appears to be fleeting at best.

Furthermore, and probably most important to this case, petitioner's paid care provider in the past and the person expected to provide the care in the future is her husband, and state law specifically disallows MA payment to a legally responsible relative such as a spouse from providing paid PCW services. See Wis. Admin. Code, §107.112(4)(d).

**CONCLUSIONS OF LAW**

The DHCAA correctly determined that petitioner does not need professional PCW services based upon her medical records and the fact that her own husband has been the care provider in the past.

**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 10th day of June, 2014

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\sBrian C. Schneider  
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 10, 2014.

Division of Health Care Access and Accountability