



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

In the Matter of

██████████ ██████████
██
██

DECISION

MPA/157362

PRELIMINARY RECITALS

Pursuant to a petition filed May 5, 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 (DHCAA or Division) in regard to Medical Assistance (MA), a hearing was held on June 11, 2014, by telephone.

The issue for determination is whether the Division correctly authorized 9.5 hours weekly of PCW time, rather than the requested 27 hours weekly, for the petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████ ██████████
██
██

█

Respondent:

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

By: Justin Zarling, nurse auditor
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. He is certified for MA.
2. In March, 2014, a prior authorization request (#...██████████) was submitted on the petitioner's behalf for 27.0 hours weekly of PCW services, beginning March 12, 2014. On April 18, 2014, the

Division issued written notice that it was “modifying” the request by approving PCW time of 9.5 hours weekly.

3. The Division’s basis for service reduction was that the number of requested hours was not medically necessary. In particular, the Division concluded that this level of PCW services was not needed because the petitioner did not require physical assistance for bathing, upper body dressing, eating, standard toileting, mobility, transfers or ambulation, based on in-person observations made by a Department nurse auditor.
4. The petitioner, age 41, resides in the community. The petitioner has diagnoses of back pain, congestive heart failure, and debility. He has functional limitations in the areas of occasional incontinence, endurance, shortness of breath with exertion, and ambulation. The shortness of breath is related to his congestive heart failure; the petitioner has ascites (fluid build-up in his abdomen), which pressures his breathing. The petitioner ambulates with a cane or walker, and his gait is normal.

A Personal Care Screening Tool (PCST) review was performed by a nurse from the provider for the petitioner on March 6, 2014. The PCST program concluded that the petitioner requires 27.0 hours of PCW care weekly. The PCST results declared that the petitioner required PCW physical assistance with bathing daily, upper and lower body dressing twice daily, grooming twice daily, incontinence care twice daily, other toileting three times daily. He feeds himself, and chooses not to wear incontinence products. He does use a bedside urinal at night. The petitioner takes oral medications.

5. A screener/nurse from the Department evaluated the petitioner on November 13, 2013. That screener concluded that the petitioner did not need physical assistance with bathing, upper body dressing, eating, standard toileting, mobility, transfers or ambulation. He was observed to have full range of motion in the upper extremities. The Department’s screener concluded that the petitioner does require help with lower body dressing, grooming once daily, and twice daily incontinence care.
6. The petitioner requires physical help with lower body dressing, grooming once daily, and twice daily incontinence care. He is able to perform his other care tasks, although he does them slowly due to low endurance.

DISCUSSION

Personal care worker service (PCW), as defined at Wis. Admin. Code §DHS 107.112(1), is an MA-covered service, subject to prior authorization after the first 250 hours per calendar year. Wis. Admin. Code §DHS 107.112(2) (May 2009). In determining whether to approve such a service request, the Division employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be a medical necessity, appropriate, and an effective use of available services. *Id.* The Division argues that the authorization criteria have not been satisfied for the reason given in Finding #3 above.

The Department asserts that it has reduced the PCW time to the amount it believes is necessary to perform purely PCW tasks. The petitioner contends that s/he needs all of the requested care time.

The state code does restrict MA-covered PCW tasks as follows:

(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.

Wis. Admin. Code, §DHS 107.112(2)(b).

The petitioner testified that he needs more care time because he does things slowly due to low endurance. He also mentioned that he appreciates having a worker to come in and talk to him. On the other hand, the Department's nurse credibly testified to his first hand observation of the petitioner's abilities in November 2013. That testimony was persuasive and carries the day here. Thus, the Department established that he requires the following daily times for activities of daily living (ADL) tasks: bathing – 0 minutes, upper body dressing – 0 minutes, lower body dressing – 20 minutes, grooming – 15 minutes, eating – 0, mobility – 0, toileting – 0 minutes, incontinence care - 30 minutes, transfers – 0 and ambulation - 0. These are the Department's maximum standard time amounts for the allowed tasks. These amounts bring total ADL time for the week up to 455 minutes/7.5 hours weekly.

The Division's policy standard is to add no more than 25% of the ADL time to the authorization or services incidental to ADLs. In this case, that would allow addition of 113.75 minutes weekly to the total. Thus, the petitioner's weekly PCW time for the period is 9.50 hours (7.5 + 1.96).

CONCLUSIONS OF LAW

1. The petitioner requires 9.5 PCW hours weekly for the current authorization period.

THEREFORE, it is

ORDERED

That the petition is 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 30th day of July, 2014

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 30, 2014.

Division of Health Care Access and Accountability