



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████ ██████
██████████████████
██████████████████

DECISION

MPA/157370

PRELIMINARY RECITALS

Pursuant to a petition filed May 01, 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 June 02, 2014, at Madison, Wisconsin.

The issue for determination is whether the Department erred in its modification of PA # ██████████ for personal care worker (PCW) hours.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████ ██████
██████████████████
██████████████████

Respondent:

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

By: Cindy Zander, RN, BSN (in writing)
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Dane County. She has diagnoses including spinal muscular atrophy and scoliosis. Petitioner got a new power wheelchair in December 2013. Petitioner is still waiting for the appropriate parts and supports to be fit for this new chair.

2. Petitioner's provider, Community Living Alliance, filed a PA request for PCW hours on February 5, 2014. The request sought 54.25 hours per week plus 14 hours travel.
3. The Department modified the PA to allow 49.5 hours of PCW services plus 24 hours of travel per year. As part of the allowed PCW time, the Department allowed 60 minutes per day for transfers with the hooyer lift – each transfer being allowed 15 minutes. Petitioner was also allowed 30 minutes per day for “positioning.”
4. Petitioner appealed.

DISCUSSION

MA coverage of PCW services is described in the Wis. Adm. Code, §DHS 107.112. Covered services are specified in subsection (1), and are defined generally 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." Examples of covered services are assistance with bathing, with getting in and out of bed, with mobility and ambulating, with dressing and undressing, and meal preparation. The Code also provides that, “No more than one-third of the time spent by a personal care worker may be in performing housekeeping activities.” Wis. Adm. Code, § DHS 107.112(3)(e).

In determining the number of PCW hours to authorize, the OIG uses the standard above along with the general medical necessity standard found at Wis. Adm. Code, § DHS 101.03(96m). Essentially the medical necessity standard requires a service to be basic and necessary for treatment of an illness, not necessarily the best service possible, and not just for convenience. To determine the number of PCW hours to authorize the OIG uses the Personal Care Screening Tool (PCST), a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The PCST allots a specific amount of time in each area the recipient requires help, which the OIG's reviewer can then adjust to account for variables missing from the screening tool's calculations.

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 place of residence in the community. Wis. Admin. Code § DHS 107.112(1)(a). Covered PCW services include only 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).

It is petitioner's burden to establish the necessity of the requested time. At the time of hearing, petitioner conceded that there are no tasks that are needed that were not allowed by the Department. Petitioner

explained that she disputes the Department's permitted time because more time is needed for complex positioning than the 30 minutes per day allowed by the Department. The Department, in its written submission, noted that the 30 minutes per day is the maximum that is allowed under the guidance of the PCST. The Department, however, noted that the amount of time sought for positioning, in excess of the PCST guidance, was not supported. Petitioner's provider testified by way of Becky Pearson, RN who testified that she has been working with petitioner for at least 10 years. Ms. Pearson testified that additional time for complex positioning is needed. I note that element 11 of the PA PC Addendum does include a specific request for additional time for hoist lift transfers and complex positioning. Ms. Pearson conceded that her explanation of the reason for the additional time was not clearly set forth in the addendum.

Based on the record at hearing, I am convinced that petitioner needs some additional time for positioning. It may be that when her chair is fitting better this will no longer be necessary. I assume this will be resolved during this PA period. Further requests for additional time based on the difficulties with the wheelchair will need to be more thoroughly articulated in the future and will need to be accompanied by more substantial evidence. For the time being, I find that 2 additional units per day (14 units per week) are sufficient to meet this stated need.

I note to the petitioner that his provider will not receive a copy of this Decision. In order to have the claim approved, the petitioner must provide a copy of this Decision to the provider. The provider must then submit a billing statement with a copy of this Decision to receive the approved coverage.

CONCLUSIONS OF LAW

The Petitioner and her provider have established the need for an additional 2 units per day of PCW time for complex positioning due to a presently ill-fitting wheelchair.

THEREFORE, it is

ORDERED

That the petitioner's provider is authorized to provide to the petitioner an additional 14 units per week of PCW services amounting to a new total of 212 units per week, and submit its billing statement to the Department's fiscal agent, Forward Health which is directed to pay the claim. A copy of this decision should accompany that statement.

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 18th day of July, 2014

\sJohn P. Tedesco
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 18, 2014.

Division of Health Care Access and Accountability