



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/157551

PRELIMINARY RECITALS

Pursuant to a petition filed May 08, 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 12, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly modified the Petitioner's Prior Authorization (PA) request for personal care worker services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Sharon Beck

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. She is 47 years old. She lives with her family and PCW.

2. Petitioner's diagnoses include hypertension, hypoproteinemia, dizziness, mild mental retardation, attention deficit disorder, seizure disorder, fatigue, migraines, depression, anxiety.
3. On October 17, 2013, Milwaukee County conducted an assessment of the Petitioner using the Long-Term Care Functional Screen (LTCFS) tool. The following is the assessment of the Petitioner's needs at that time:

Bathing – Level 1 – helper needed but helper need not be present. Petitioner needs help when taking a bath due to seizures that she has sometimes 3x/day.

Dressing, Eating, Mobility, Toileting, Transferring – independent

Meal Preparation – Level 1 – needs help weekly or less with meal prep and grocery shopping d/t the possibility of seizure

Medication Administration – independent

Laundry and/or Chores – needs help weekly or less; can't go downstairs due to seizures

Transportation – can't drive due to physical, psychiatric or cognitive impairment

4. On January 23, 2014, an assessment of the Petitioner was conducted by Independence First using the Personal Care Screening Tool (PCST). The following is the assessment of the Petitioner's needs:

Bathing – Level D – Petitioner needs assist in/out of tub; assist with hard to reach areas and lower body; set-up and ensure task completion. Has shower chair for safety and stability. PCW to monitor for seizure activity. 7 days/week.

Dressing – Upper and Lower – Level B – Petitioner needs assist with clothing placement d/t pain, tremors. Poor attention span r/t seizure activity; redirect for task completion. PCW to button, snap and zip clothing d/t poor fine motor skills and tremors. Changed to B from D due to cross screen validation.

Grooming – Level E – set up oral care and washcloth for face and hands. PCW to provide nail care and comb/brush hair d/t poor endurance, pain and poor attention r/t seizure activity.

Eating – Level B – cue and prompt; lack of wanting to eat t/r choking spells and history of Heimlich maneuver r/t onset of seizure activity. PCW to monitor and remove food for onset of seizure activity.

Mobility – Level B – monitor and provide assistance for safety with onset of seizures. Poor balance. Change to B from C due to cross screen validation.

Toileting – Level A – toilets in a.m. and p.m.; assist with on/off toilet, proper cleansing, redirect for task completion; PCW to ensure good handwashing; incontinent of bladder and bowel with seizure activity. Change to A from D and E due to cross screen validation.

Transferring – Level B – Monitor and provide assistance as needed for stability.

Medication Assistance – Level B – PCW to provide medication reminders 2x/day and may open pill containers as directed by consumer. Change to B from D due to cross screen validation.

The PCST notes that the Petitioner has seizures daily and the PCW is requires to provide a safe environment, comfort and reassurance.

The home health certification and plan of care indicate that the Petitioner's recent seizures have been lasting longer with residual effects lasting up to one hour. It also

notes that Petitioner is incontinent of bowel and bladder during and after seizure. It further notes that Petitioner holds PCW arms at all times when ambulating or transferring due to sudden onset of seizure, fall and safety concerns.

The plan of care supports an increase in time for the PCW to stay with the consumer longer after seizures due to residual effects of up one hour and also notes the Petitioner needs more 1:1 time to complete ADLs.

The addendum notes that Milwaukee County will not change its LTCFS and the LTCFS does not capture Petitioner's current care needs.

5. On February 24, 2014, Independence First submitted a PA request on behalf of the Petitioner requesting 28 hours/week of PCW services plus 24 hours/year PRN services.
6. On May 2, 2014, the agency modified the Petitioner's request to 13.25 hours/week of PCW services plus 24 hours/year PRN services.
7. On May 8, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

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.

To determine the numbers of PCW hours providers and the DHCAA 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.

In this case, the agency approved the time requested for bathing, upper and lower body dressing, grooming and medication administration. The agency denied time requested for mobility, toileting/incontinence care, seizure interventions and additional time to complete tasks.

The Petitioner asserts that the primary condition that necessitates her need for assistance with activities of daily living is the seizure disorder. The provider and Petitioner testified that the Petitioner has several seizures each day. The Petitioner and provider testified that the seizure activity has increased over the last 6 months. There was testimony that the residual effects require the PCW to remain with the Petitioner for an hour after each episode. The medical records submitted with the PA request do not support the testimony. Physician notes from visits on May 8, 2013, September 11, 2013, January 6, 2014, February 3, 2014 and April 1, 2014 report Petitioner complaining of intermittent seizure activity and episodic severe symptoms related to migraine headaches including dizziness and unsteadiness. However, they do not support the testimony of several seizures/day. Specifically, the notes from February 3, 2014 note that “she has no actual episodes of seizures”. The notes from May 8, 2013 report “questionable history of seizure disorder – intermittent”. The notes from January 6, 2014 indicate that Petitioner “needs assistance for ADLs when she gets episodic severe symptoms” and further note that she is stable but has symptoms “sometimes severe enough to need assistance with ADLs.”

The agency determined that Petitioner does require intermittent assistance with mobility, toileting, and transferring but asserts that the PRN time that was approved is sufficient to meet the Petitioner’s needs because her need for assistance with those activities is intermittent and dependent on the severity of her symptoms.

Based on the evidence presented, I conclude that the agency has properly modified the Petitioner’s PA request. There is insufficient medical evidence to support the Petitioner’s assertions regarding her need for assistance. Based on the evidence, the agency properly concluded that the Petitioner’s need for assistance related to the intermittent seizure disorder can be met with the PRN hours approved. This decision does not prohibit the Petitioner from submitting a new PA request if the Petitioner is experiencing an increase in seizure activity but there must be sufficient documentation submitted with that request to support the request for additional PCW services.

CONCLUSIONS OF LAW

The agency properly modified the Petitioner’s request for PCW services to 13.25 hours/week and 24 hours PRN.

THEREFORE, it is

ORDERED

That the Petitioner’s appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 23rd day of July, 2014

\sDebra Bursinger
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 23, 2014.

Division of Health Care Access and Accountability