



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/157887

PRELIMINARY RECITALS

Pursuant to a petition filed May 23, 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 modify a Medical Assistance (MA) authorization for personal care worker (PCW) services, a telephone hearing was held on July 08, 2014.

The issue for determination is whether petitioner should receive 88, rather than 119, weekly units of PCW services.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

|

Respondent:

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

Written Appearance by: Cindy Zander, RN BSN
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 71 year old resident of Milwaukee County.

2. Petitioner's diagnoses include asthma, arthropathy, carpal tunnel, depressive disorder, and diabetes. Functional limitations are listed as bowel/bladder incontinence, endurance, ambulation, dyspnea with exertion and chronic pain. Exhibit 3. She requires assistance with activities of daily living (ADLs), and her daughter, LB, is her care worker.
3. On June 5, 2013, Independence First requested authorization for (1) 119 units per week PCW services, (2) 96 units per year to be used as needed, and (3) 28 units per week for travel time for a one-year period effective April 30, 2013, PA no. [REDACTED]. Exhibit 2.
4. By a letter dated April 14, 2014, the DHCAA granted 88 units per week PCW services. The "as-needed" time and travel time was granted as requested. Exhibit 2.
5. The DHCAA granted 140 minutes daily for petitioner's Activities of Daily Living (ADL), including bathing, dressing, grooming, and toileting. Additionally, 47 minutes per day was given for incidental services. Exhibit 2. No time was given for eating or for range of motion exercises. No time was entered for eating because petitioner is independent in this activity. There is no prescribed therapy program for range of motion. Exhibit 3. Petitioner's daughter does do exercises with petitioner but that is not part of the medical orders.

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 approved 88 units of PCW services each week for the petitioner; one unit equals 15 minutes. To reach this figure the DHCAA initially used 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 then adjusted the tool's results based upon Department maximum time allowances and considerations of petitioner's medical records.

Petitioner did not provide specific times necessary for providing the PCW services, but instead testified that more time was needed than the maximums because of petitioner's unique circumstances and needs to rest. Nothing was quantified beyond assertions that meal preparation cannot be completed in 15 minutes, bathing can take 45 minutes to an hour, and bathing, dressing, and grooming, in total, takes approximately 2 hours each day. The respondent's modified PCW hours provide for 140 minutes for these ADL's, which exceeds the petitioner's representatives' testimony. Without a better way to quantify the time for services, however, I find it difficult to add more time. An issue with family members being the personal care workers is that they may take more time to do care tasks due to extra carefulness or inexperience, and thus the Department has set maximum times for a typical care worker.

Petitioner should be aware that if Independence First can show a medical need for more time, it can always request an amendment for additional *specific* time with evidence to show the need for the additional time. However, based upon the evidence before me I cannot conclude that the reduction to 88 units per week was wrong.

CONCLUSIONS OF LAW

The DHCAA's modification of the request for PCW hours was appropriate based upon petitioner's medical needs and the Department's policies for PCW approval.

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 21st day of August, 2014.

\sPeter McCombs
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 August 21, 2014.

Division of Health Care Access and Accountability