



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

In the Matter of:

[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/158593

PRELIMINARY RECITALS

Pursuant to a petition filed June 23, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Menominee County Department of Human Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on August 5, 2014.

The issue for determination is whether petitioner's Personal Care Worker ["PCW"] time may be reduced.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Lois Krizan, Operations Administrator
Nicole McNeel, Registered Nurse ["RN"], Personal Care Program
Menominee County Department of Human Services
Hwys 47 and 55
PO Box 280
Keshena, WI 54135-0280

OTHER PERSONS PRESENT:

[REDACTED], Certified Nursing Assistant ["CNA"]
[REDACTED], CNA & petitioner's mother

ADMINISTRATIVE LAW JUDGE:
 Sean P. Maloney
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (42 years old) is a resident of Menominee County, Wisconsin.
2. Petitioner is a quadriplegic (spinal cord injury) with loss of fine motor skills in bilateral hands; she suffers from multiple other ailments including recurrent pain and muscle spasms, hypotension, bronchitis, sinusitis, depression, headaches (chronic migraines), ulcer on right ankle, recurrent Urinary Tract Infections ["UTI's"], pneumonia, and decubitus ulcer to buttocks.
3. Petitioner was receiving 192 units (48 hours) per week of Personal Care Worker ["PCW"] time for her cares; effective June 28, 2014 petitioner's PCW time was reduced to 123 units (30.75 hours) per week.
4. At the August 5, 2014 Hearing in this matter the County representatives were not able to explain why petitioner's PCW time was reduced other than to state that it was done by a computer at the state level using the *Personal Care Screening Tool* ["PCST"].
5. Petitioner's April 2014 PSCT and April 2013 PCST are the same in all relevant respects.

DISCUSSION

By law, MA pays only for medically necessary and appropriate health care services when provided to currently eligible MA recipients. Wis. Admin. Code § DHS 107.01(1) (February 2014); See also, Wis. Stat. §§ 49.46(2) & 49.47(6)(a) (2011-12). 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 or her place of residence in the community. Wis. Admin. Code § DHS 107.112(1)(a) (February 2014). Further, some medically oriented tasks may be covered as PCW services if the PCW has received special training in performing the task. Wis. Admin. Code §§ DHS 107.112(2)(b) & 107.11(2)(b)1. (February 2014). PCW services must be performed according to a written plan of care developed by a Registered Nurse ["RN"]. The plan must be based on the RN's visit to the recipient's home and must be reviewed by the RN at least every 60 days via a home visit. Wis. Admin. Code §§ DHS 107.112(3)(b) & (c) (February 2014).

In addition to the medically oriented tasks allowed for PCW's that have received special training, the only PCW services covered are 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) & (4)(f) (February 2014).

In this case, as noted in the above *Findings of Fact*, the County representatives were not able to explain why petitioner's PCW time was reduced other than to state that it was done by a computer at the state level using the PCST. However, it is noted that petitioner's April 2014 PSCT and April 2013 PSCT are the same in all relevant respects. It is true that both the April 2014 PSCT and the April 2013 PSCT allocate 123 units of weekly PCW time -- but this does not explain how the 123 unit figure was arrived at, why petitioner was receiving 192 units, and why petitioner's PCW was reduced from 192 units to 123 units. Therefore, the reduction cannot be sustained and must be reversed.

Finally, the record of this matter contains allegations that one of petitioner's PCW workers was committing fraud by not performing cares for which she claimed payment. This is a serious allegation and should be addressed by the proper authorities. An administrative Hearing, however, is not the proper forum in which to address such allegations.

CONCLUSIONS OF LAW

For the reasons explained above, petitioner's PCW time may not be reduced.

NOW, THEREFORE, it is

ORDERED

That this matter be REMANDED to the County and that the County not reduce petitioner's PCW time from 192 units (48 hours) per week to 123 units (30.75 hours) per week. This must be done within 10 days of the date of this *Decision*.

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 8th day of August, 2014

\sSean P. Maloney
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 August 8, 2014.

Menominee County Department of Human Services
Bureau of Long-Term Support