



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/158608

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 20, 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 July 29, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether DHS properly approved the provider's request for 1 hour per day of Personal Care Worker (PCW) services with 1 hour per day of travel time for the limited duration of 13 weeks, and properly denied the provider's request for 2 hours per week of as needed PCW services and 6 skilled nursing visits per year when Petitioner has not yet completed approved occupational therapy and her health condition is stable.

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

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

ADMINISTRATIVE LAW JUDGE:

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County. She is certified as eligible for MA. She lives at home with her son.
2. Petitioner's primary diagnosis is affective personality disorder, but she has other diagnosis for anxiety, chronic pain, and hypertension. Petitioner takes approximately eight medications every day, including Zoloft, Ambien, Totuda, Phentermine, Alprazolam, Tramadol, Vicodin, and Verapamil. These medications are for management of her mental health conditions and pain.
3. On May 12, 2014 Quality Assurance submitted a request for authorization Personal of Care Worker (PCW) services for 1 hour per day, 7 days per week, for 53 weeks, at a cost of \$11,501.00 with travel time of 1 hour per day, 7 days per week, for 53 weeks, at an additional cost of \$11,501.00. Quality Assurance also requested authorization for 2 hours per week of as needed PCW services, for 53 weeks, at a cost of \$3,286.00. Lastly Quality Assurance requested six skilled nursing visits per year, at a cost of \$690.00.
4. On July 16, 2014 the Department of Health Services (DHS) sent Petitioner a noticed indicating that they had partially denied Quality Assurances' request for prior authorization. The Department approved 1 hour per day of PCW services and 1 hour per day of travel time, but only for the limited duration of 13 instead of the 53 weeks requested. The Department reasoned that they had previously approved occupational therapy services for Petitioner. Petitioner has not yet completed those services. Those services could change Petitioner's needs. The Department also denied Quality Assurance's request for 2 hours per week of as needed PCW services and 6 skilled nursing visits per year because the clinical documentation did not establish that those services were medically necessary.
5. Petitioner is currently receiving 2 hours per day of PCW services, and would like the 2 hours per day of PCW services to continue. However, the provider has only requested 1 hour per day of PCW services with 1 hour per day of travel time. Petitioner's PCW is her daughter.
6. On June 27, 2014 Petitioner filed an appeal with the Division of Hearings & Appeals.

**DISCUSSION**

Personal Care Services are a covered service by Medicaid. They are defined 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. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care." *Wis. Admin. Code DHS §107.112(1)(a)*.

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under *Wis. Admin. Code DHS §107.11(2)*, that are needed to treat a recipient's medical condition or to maintain a recipient's health. *Wis. Admin. Code DHS §107.112(b)*

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

## Wis. Admin. Code § DHS107.02(3)(b)

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

## Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
  2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
  3. Is appropriate with regard to generally accepted standards of medical practice;
  4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
  5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
  6. Is not duplicative with respect to other services being provided to the recipient;
  7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
  8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
  9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

## Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

Quality Assurance, on behalf of Petitioner, requested 1 hour per day, 7 days per week of PCW hours, with 1 hour per day, 7 days per week of travel time for the PCW. Petitioner, in her appeal letter, requested 2

hours per day of PCW services. According to the letter from the Department of Health Services, Office of the Inspector General, DHS approved Quality Assurance's request of PCW time, but for the limited duration of 13 weeks instead of the requested 53 weeks.

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, Quality Assurance, completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located on the Forward Health website: <https://www.forwardhealth.wi.gov/WIPortal>, under topic number 3165. The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table. This chart can also be found at the aforementioned website. A copy of the table was also attached to the OIG letter, Exhibit 3, pg.22.

In general seven activities of daily living (ADLs) are reviewed: 1) Bathing, 2) Dressing, 3) Grooming, 4) Eating, 5) Mobility, 6) Toileting, and 7) Transfers. In addition, Medically Oriented Tasks (MOTs), such as medication assistance, are also examined.

The Personal Care Activity Time Allocation Table is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165.*

In this case, the PCST states that Petitioner needs help with three ADLs: bathing, dressing, and grooming. Quality Assurance requested 30 minutes per day of PCW services for bathing, 20 minutes per day of PCW services for dressing, and 10 minutes per day of PCW services for grooming. This totaled one hour of PCW services per day. Quality Assurance requested one hour per day of PCW services for 53 weeks.

The PCST states that Petitioner requires 1.25 hours per day of PCW services. Per the on-line Provider Handbook, topic 3167, additional time may be allocated for incidental cares, such as light meal preparation, incidental laundry, or light cleaning after bathing or grooming Petitioner. For an individual who does not live alone, time equal to 1/4 of the time it actually takes to complete Activities of Daily Living (ADLs) and Medically Oriented Tasks (MOTs) may be allocated. I believe that this additional 15 minutes is for services incidental to ADLs. However, the provider never requested this additional 15 minutes. In addition there is nothing in the record to support the need for this additional 15 minutes per day of PCW time in this particular case.

Petitioner is independently requesting 2 hours per day of PCW services. The burden of proof is on the petitioner to establish that he is eligible for more hours MA-covered services than the DHCF has determined that she requires under MA Program rules. This means that she must show by the preponderance of the evidence (i.e., that it is "more likely than not") that he is eligible for hours above the level found by the DHCF Nurse Consultant.

With regard to bathing, the Personal Care Screening Tool, indicated that Petitioner needs 30 minutes for bathing. The PCST states that Petitioner is able to bathe in shower, tub, or bed with partial physical assistance from another person. The PCST specifically notes that Petitioner needs assistance getting in and out of the tub because she has a limited range of motion caused by arthritic changes in her back. She further notes that Petitioner's mental health diagnosis causes self-neglect problems. This level of assistance is option D on the Personal Care Screening Tool. The time allocation for this selection is 30 minutes if the PCW is assisting the person with bathing and other tasks.

With regard to dressing, it should be noted that one incident per day of dressing is normally included in the 30 minutes allowed for bathing. As such, DHS would usually approve only one, 20 minute incident of dressing upper and lower body per day. DHS appears to have done that in this case. The PCST states that Petitioner needs partial physical assistance from another person to dress the upper body and lower body. This is option D on the PCST. The time allocation for this selection is 10 minutes for the upper

body and 10 minutes for the lower body for a total of 20 minutes. Although the nurse completing the PCST selects option D for the lower body, she states that PCW assistance is not required, but then specifically comments that “patient requires physical assistances from PCW with dressing both uppers and lowers.” She further notes that Petitioner suffers from self-neglect caused by her mental health diagnosis and that her clothes are at times severely soiled.

With regard to grooming, the PCST states that Petitioner needs physical assistance to set-up grooming supplies, but can groom self. This is option D on the Personal Care Screening Tool. The time allocation for this selection is 5 minutes up to two times per day for a total of 10 minutes. The screener again makes similar specific comments regarding Petitioner’s self-neglect, back pain, and that Petitioner’s pain medication makes her sleepy.

With regard to feeding, the PCST states Petitioner feeds self, with or without use of assistive device or adapted methods. This is option A on the Personal Care Screening Tool. There is no time allocation for this selection. In her comments the screener notes that Petitioner requires physical assistance with meal setup, that Petitioner has problems cutting meats and opening containers, that Petitioner is unable to stand for long periods of time, and that Petitioner has self-neglect problems causing her not to feed herself at times.

With regard to mobility, the PCST states that Petitioner is able to move about by herself, but requires presence of another person intermittently for supervision or cueing. This is option B. There is no time allocation for this selection. In her comments the screener notes that although Petitioner needs help walking and negotiating the stairs, Petitioner has the help of a family member when her PCW is not there.

With regard to toileting, the PCST states that Petitioner is able to toilet herself or provide her own incontinence care, with or without assistive device, but requires presence of another person intermittently for supervision or cueing. This is option B. There is no time allocation for this selection. In her comments the screener notes that although Petitioner needs help getting to and from the toilet, Petitioner has family who can help when her PCW is not there.

With regard to transfers, the PCST states that Petitioner is able to transfer self, with or without assistive device, but requires intermittent supervision or cueing. This is option B. There is no time allocation for this selection. In her comments the screener notes that patient requires physical assistance of PCW with transfers due to excruciating back pain. Patient has family to assist when PCW is not there.

With regard to medication assistance, the PCST states that petitioner needs reminders to take her medication. This is option B. There is no time allocation for this selection.

Petitioner disputes the requested and approved 1 hour per day of PCW services because she and her daughter do not believe that is enough time for her daughter to get everything completed for her mother. They would like 2 hours per day of PCW services. In this case there is nothing that supports Petitioner’s request for 2 hours per day of PCW services. Petitioner’s testimony is largely credible and comports with the Personal Care Screening tool. Using that Screening tool, Petitioner is entitled to 60 minutes or 1 hour of PCW services. This is broken down to 30 minutes for bathing, 20 minutes for dressing, and 10 minutes for grooming. Petitioner’s PCW is her daughter. She lives with her son. The Personal Care Screening Tool states that when her daughter or PCW is not there, there is someone in the home, Petitioner’s son, available to help her. Petitioner prefers that her daughter help her because her daughter “understands her.” She has various mood swings and issues related to her mental health diagnoses. She believes that her daughter is best equipped to help her. This is probably true, but it still does not support 2 hours per day of PCW services. Looking at the Personal Care Screening Tool’s Instructions and the Activity Time Allocation Table compared to the areas that Petitioner needs assistance and Petitioner’s living situation, 1 hour per day should be sufficient to complete those tasks. There is nothing in the

record nor Petitioner's testimony that demonstrates she has unusual circumstances that would require a longer period of time to complete these activities of daily living.

In this case the provider, Quality Assurance Home Health, requested the PCW services for 53 weeks. The nurse consultant approved the PCW services requested with the travel time requested for a limited duration of 13 weeks. The nurse consultant did not approve this service beyond 13 weeks because there is an authorization for occupational therapy (OT) that Petitioner has not yet completed. An occupational therapist can provide suggestions to make Petitioner more independent within her home.

Reevaluating these services after Petitioner works with an OT is the correct utilization of resources. The OT will be able to assess if there are less expensive alternative services and how Petitioner functions in her home. The department can review the information that the OT provides and make a determination when that information is available. This creates a closer professional scrutiny of care as the statutes dictate.

#### As Needed PCW Services

The provider, Quality Assurance Home Health, requested an additional amount of time for PCW services on an as needed basis, which the nurse consultant denied. DHS denied this request because "the selections in the Personal Care Screening Tool for mobility, transfers, and toileting do not support the need for these services at medical appointments." The nurse consultant's point is valid. The mobility section of the Screening Tool states that Petitioner is able to move about by herself, but requires intermittent supervision or cueing. The Screening Tool goes on to state that Petitioner transfers herself and is able to toilet herself. Petitioner's daughter testified that the main reason she needed to attend Petitioner's doctor appointments was that Petitioner is forgetful and often does not correctly communicate changes in her treatment plan or care. PCW services are not covered if less expensive alternative services are available. There is no reason why a medical provider cannot write the changes in a treatment plan for Petitioner to show to her daughter. This is a less expensive alternative, and therefore, the nurse consultant correctly denied this service.

#### PRN Skilled Nursing

Petitioner did not directly dispute this portion of the denial. DHS denied these visits because Petitioner's diagnoses are stable and there is no change of condition that would support the skilled nursing services. The medical records support the nurse consultant's denial.

### **CONCLUSIONS OF LAW**

DHS correctly approved Provider's request for 1 hour per day of PCW services with 1 hour per day of PCW travel time for the limited duration of 13 weeks. DHS also correctly denied Petitioner's prior authorization for 2 hours per week of as needed PCW services and six skilled nursing visits per year.

**THEREFORE, it is**

**ORDERED**

That the Petition 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 13th day of August, 2014

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\sCorinne Balter  
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 13, 2014.

Division of Health Care Access and Accountability