



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/158955

PRELIMINARY RECITALS

Pursuant to a petition filed July 11, 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 September 25, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly modified the Petitioner’s PA request for PCW services.

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: Kelly Townsend

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 (CARES # ) is a resident of Milwaukee County. She is 67 years old and lives alone.

2. Petitioner's diagnoses include hypertension, insulin dependent diabetes, morbid obesity, osteoarthritis, chronic pain and COPD/asthma. Petitioner's limitations include back and joint pain, shortness of breath, a history of bronchitis, one functioning lung and poor endurance.
3. On April 15, 2014, the agency received a PA request from Grace Personal Care Services requesting 26.5 hours/week of PCW services for the Petitioner, plus 24 hours/year PRN PCW services and 7 hours/week PCW travel time.
4. On April 15, 2014, the provider completed a Personal Care Screening Tool (PCST). The PCST assessed the following needs of the Petitioner:
 - Bathing – Level D – needs assistance in/out of tub; unable to clean self properly; becomes SOB with minimal activity; bathes daily due to incontinence.
 - Dressing (upper and lower) – Level E – PCW dresses upper and lower body; Petitioner can hold arms up to slide shirt on overhead and arms; requires pants to be put over feet while Petitioner is sitting and pulled up as client stands up; buttons/zippers are secured by PCW.
 - TED hose – Petitioner has hose which should be worn daily but she does not always wear them.
 - Grooming – Level F – unable to do her hair; SOB with minimal activity.
 - Eating – Level A – PCW prepares meals; Petitioner can feed self; needs reminders to eat occasionally.
 - Mobility – Level C – Petitioner has a rolling walker for inside apartment and motorized wheelchair for outside; Petitioner can stand from sitting with assistance of person or walker for stability and walk to the bedroom or bathroom.
 - Toileting – Level C and D – Petitioner uses a commode; needs assistance to empty commode and requires assistance with cleaning 3x/day; requires assistance with incontinence care 2x/day.
 - Transferring – Level D – transfers with assist of one person for balance/strength; walker provides stability; requires supervision as gait is unsteady.
 - Medication Assistance – Level B – needs reminders 2x/day; Petitioner checks her blood sugars BID and gives herself insulin.
5. On June 17, 2014, the agency issued a notice to the Petitioner informing her that the agency modified the request to approve 7 hours/week of PCW services for bathing assistance. The agency also approved 24 hours/year PRN PCW services and approved travel time requested.
6. On July 11, 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, or one-fourth when the recipient lives with family. 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 are required by the DHCAA to 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 relies primarily on three physician progress notes in determining the Petitioner's level of need and appears to give little or no weight to the conclusions of the assessor that completed the PCST. While there are some inconsistencies between the progress notes and the PCST assessment, they are not so significant as to allow the agency to ignore the conclusions of the PCST assessment. Also, the notes are not sufficiently comprehensive with regard to the Petitioner's conditions to allow them to be given more weight than the PCST in determining the Petitioner's need for PCW services.

The Petitioner testified at the hearing that she has chronic back pain and general pain "all over her body." This is consistent with her diagnoses of osteoarthritis and chronic joint and back pain. The agency approved the maximum time for bathing due to back and joint pain.

With regard to dressing, the PCST, physician notes and Petitioner's testimony support the need for Petitioner to have assistance with lower body dressing. For upper body dressing, the assessor noted that the Petitioner is able to raise her arms up. For that reason, I conclude the Petitioner has sufficient range of motion to be able to don a shirt without assistance. One dressing change is included with bathing. Therefore, I conclude, based on the evidence, I conclude that the Petitioner requires 10 minutes/day for lower body dressing.

With regard to grooming, the PCST assessor reports and Petitioner testified she is unable to do her own hair. The Petitioner further testified she cannot brush her teeth due to pain and she cannot care for her nails. Based on the evidence regarding the Petitioner's back and joint pain, I conclude she requires assistance with nail care. With regard to hair care and teeth care, I conclude that the evidence that she is able to raise her arms overhead indicate the ability to perform those cares. Based on the evidence, I conclude the Petitioner requires 5 minutes/day for grooming assistance.

For mobility, the client has a walker for inside and a motorized wheelchair for outside. The PCST assessor notes the Petitioner is able to stand from sitting with the help of a person or her walker for stability and she is able to walk to the bathroom or bedroom. The Petitioner testified that she sometimes needs someone to hold the walker for stability. Based on the evidence, I conclude the Petitioner does not need regular assistance with mobility.

With regard to toileting, the PCST indicates that the Petitioner is able to toilet herself 3x/day and needs incontinence care 2x/day. The assessor reported the need for supervision and assistance to complete the toileting task and assistance with incontinence care. The Petitioner testified that she needs assistance 1 – 2 x/day with cleaning herself and 2 – 3 x/day for incontinence care. Based on the Petitioner's chronic back and joint pain, I conclude she requires 35 minutes/day assistance with toileting (5 minutes x 3/day for toileting and 10 minutes x 2/day for incontinence care).

For transferring, the PCST reports that the Petitioner is able to transfer from sitting to standing with assistance of a walker or person for stability. The Petitioner testified that she is unable to get in and out of bed without assistance due to back pain and joint pain. Based on the evidence, I conclude the Petitioner requires 30 minutes/day for transfers.

The Petitioner is supposed to wear TED hose and if she did wear them, she would require assistance with applying them. However, the assessor reported that the Petitioner does not wear the hose regularly. Therefore, I conclude no time is required for assistance with the hose.

In summary, based on the evidence, I conclude the Petitioner requires the following amount of PCW services:

Bathing – 60 minutes/day x 7	420 minutes/week
Dressing – Lower – 10 minutes/day x 7	70 minutes/week
Grooming – 5 minutes/day x 7	35 minutes/week
Toileting – 35 minutes/day x 7	245 minutes/week
Transferring – 30 minutes/day x 7	210 minutes/week
Services Incidental to activities	323 minutes/week

The Petitioner has demonstrated a need for 1,303 minutes/week (21.7 hours/week) of PCW services.

CONCLUSIONS OF LAW

The evidence demonstrates the Petitioner is eligible to receive 21.7 hours/week of PCW services.

THEREFORE, it is ORDERED

That Petitioner's provider is hereby authorized to provide the Petitioner with 21.7 hours/week of PCW services and to submit its claim, along with a new prior authorization request and a copy of this Decision, to ForwardHealth for payment.

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 20th day of October, 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 October 20, 2014.

Division of Health Care Access and Accountability