



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/159181

PRELIMINARY RECITALS

Pursuant to a petition filed July 18, 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 (DHCAA or Division) in regard to Medical Assistance (MA), a hearing was held on September 3, 2014, by telephone. The hearing record was held open for 10 days for a submission from the petitioner; a submission was received.

The issue for determination is whether the Division correctly approved the petitioner's prior authorization request for PCW services at the level of 7.25 hours weekly.

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

By written submission of: Robert Derendinger, 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:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. She is certified for MA.

2. In May 2014, a prior authorization request (#...012) was submitted on the petitioner's behalf for 28.5 hours weekly of PCW services, beginning May 2, 2014. On July 3, 2014, the Division issued written notice that it was "modifying" the request by approving PCW time of 7.25 hours weekly, plus travel time.
3. The Division's basis for service denial was that the number of requested hours was not medically necessary. In particular, the Division concluded that this level of PCW services was not needed because the PCST did not supply information to support its conclusion that the petitioner needs physical help with TEDS, toileting, transfers and walking. A review of recent clinic notes revealed doctor comments that the petitioner's gait and leg strength was normal for her age. Further, there was no mention of the use of TEDS stockings in the physician plan of care submitted with the authorization request.
4. The petitioner, age 72, resides with family in the community. The petitioner has diagnoses of chronic kidney disease stage 3, lumbago (lower back pain), degenerative joint disease in the right knee, asthma, hypertension, and hyperparathyroidism. Although the Division has no record that the petitioner uses durable medical equipment, the petitioner testified that she ambulates in her residence with a walker, and that she uses an elevated toilet seat.

A state Personal Care Screening Tool (PCST) review was performed by a nurse for the petitioner on April 30, 2014. The PCST program concluded that the petitioner requires 28.5 hours of PCW care weekly. The PCST results declared that the petitioner required PCW physical assistance with bathing daily, lower body dressing twice daily, grooming twice daily, toileting four times daily, transfers, TED stocking placement, and ambulation. She feeds herself. The petitioner takes oral medications.

5. The petitioner and the Division agree that the petitioner requires help in the amount of 30 minutes daily for bathing, 10 minutes daily for lower body dressing, zero minutes daily for upper body dressing, 10 minutes daily for grooming, zero minutes for eating assistance, and zero minutes for toileting. The petitioner does not require physical assistance for ambulating, or PCW time for transfers. Her daughter, who resides with her, assists her in getting up in the morning. She has not documented that she requires TEDS stockings. The petitioner also requires the service of others to purchase and prepare her food, do laundry, and perform other incidental household tasks.

DISCUSSION

Personal care worker service (PCW), as defined at Wis. Admin. Code §DHS 107.112(1), is an MA-covered service, subject to prior authorization after the first 250 hours per calendar year. Wis. Admin. Code §DHS 107.112(2) (May 2009). In determining whether to approve such a service request, the Division employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be a medical necessity, appropriate, and an effective use of available services. *Id.* The Division argues that the authorization criteria have not been satisfied for the reason given in Finding #3 above.

The Department asserts that it has reduced the PCW time to the amount it believes is necessary to perform purely PCW tasks. The petitioner contends that s/he needs all of the requested care time.

The state code does restrict MA-covered PCW tasks as follows:

(b) Covered personal care services are:

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(2)(b).

Through hearing testimony, the petitioner established that she requires the following daily times for activities of daily living (ADL) tasks: bathing – 30 minutes, lower body dressing – 10 minutes, grooming – 30 minutes, eating – 0, mobility – 0, toileting – 0 minutes, transfers – 0. Thirty minutes is the Department's maximum standard time amount for the task of bathing. These amounts bring total ADL time for the week up to 350 minutes/5.8 hours weekly.

The Division's policy standard is to add no more than 25% of the ADL time to the authorization or services incidental to ADLs where a live-in caregiver is present. In this case, that would allow addition of 88 minutes weekly to the total. Thus, the petitioner's PCW time came out to 7.25 hours (350 + 88 = 438 minutes, divided by 60).

The petitioner testified at hearing that she does wear TEDS stockings daily, which are notoriously difficult to put on. Her physician plan of care in the authorization request did not document the use of TEDS. This hearing record was held open for 10 days to allow the petitioner to submit a statement from her physician or nurse practitioner that the petitioner is supposed to be wearing TEDS daily. A document was received. It consisted of a physician prescription for "home help – evaluate for personal care worker – dx/rheumatoid arthritis poly [illegible]." The document does *not* say what I asked for, which is a declaration that Ms. [REDACTED] is supposed to wear TEDS daily. The petitioner may wish to file a request for rehearing (see below), with an attached physician statement that she must wear TEDS daily. If she does so, on time, I will reconsider the time allotted for care.

CONCLUSIONS OF LAW

1. The petitioner requires 7.25 PCW hours weekly for the current authorization period.

THEREFORE, it is

ORDERED

That the petition is 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 6th day of October, 2014

\sNancy J. Gagnon
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 6, 2014.

Division of Health Care Access and Accountability