



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/159394

PRELIMINARY RECITALS

Pursuant to a petition filed July 23, 2014, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to modify a Medical Assistance (MA) request for personal care worker (PCW) services, a hearing was held on September 10, 2014, by telephone.

The issue for determination is whether the DHCAA modified the request for PCW to an appropriate number of hours per week.

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, Nurse Consultant

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 66-year-old resident of Marathon County who receives MA. She lives with her husband, as well as her son, daughter-in-law, and their children. Her husband also receives home health assistance; the daughter-in-law who lives with them is his caregiver. Petitioner's caregiver is another daughter-in-law who does not live with her.
2. Petitioner has a number of diagnoses including knee and wrist pain, carpal tunnel, reflux, hypertension, and depression. She has limitations in endurance, ambulation, and shortness of breath. She uses a cane to walk.

3. On May 9, 2014, Compassion Personal Home Care requested authorization for 28 hours per week PCW services, PA no. [REDACTED], along with 24 hours as-needed services for the twelve-month period. By a letter dated June 12, 2014, the DHCAA approved 10.5 hours per week (1.5 hour per day) along with the as-needed hours. Travel time also was requested and modified and is not at issue in this appeal.
4. Petitioner needs assistance with bathing, dressing, grooming, and some activities incidental to those areas. She is able to walk up to 100 yards with use of a cane and does not need assistance with transfers except for supervision. She is independent with toileting except at times when pain flares up (it is noted that the as-needed time can be used for times when petitioner needs assistance due to flare ups, assuming that medical orders call for it). There are no doctor orders to help petitioner with medications.
5. The DHCAA reviewed medical records concerning petitioner's capabilities in its decision to reduce the hours.

DISCUSSION

As a first point, the letter from Mr. Derendinger questioned the timeliness of the appeal because the Division of Hearings and Appeals appeal acknowledgement noted that the appeal was filed on July 28, 2014, one day after the July 27 deadline. The appeal is timely, however, because it was postmarked July 23, 2014, and under Division rules an appeal is considered filed on the date of the postmark. See Wis. Admin. Code, §HA 3.05(3)(c). It was an error by this office to put July 28 as the filing date.

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 1.5 hour of PCW services per day. The DHCAA 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, and is filled out by a nurse assessor from the home health agency. The DHCAA's reviewer can then adjust to account for variables missing from the screening tool's calculations.

As drafted by the nurse assessor, the screening tool showed a need for 28 hours per week in PCW services, but the DHCAA reduced the amount to 10.5 hours per week after reviewing petitioner's medical records and living situation. The living situation is important here; because petitioner lives with family members, the need for paid assistance with incidental services such as meal preparation, laundry, and clearing are lessened. It is assumed that the family members will be cooking and cleaning the living areas for themselves as well as the recipient, and thus the DHCAA will grant incidental services at the rate of one-fourth the time allotted for services directly related to activities of daily living. See Attachment 10, page 2 to Nurse Derendinger's August 26, 2014 case summary.

The DHCAA gave 30 minutes per day for bathing, noting that dressing and grooming are considered components of bathing. It gave 20 minutes each for nighttime dressing and grooming, and 20 minutes for incidentals. Mr. Derendinger noted that those tasks could be completed quicker if petitioner obtained adaptive aids that are available through the program. The main testimony against the modification came from petitioner's caregiver. She testified that she uses the entire 1.5 hour per day with petitioner in the morning. As a result she helps petitioner in the afternoon and evening essentially for no compensation.

The problem is that I can find no reason why it would take more than 1.5 hour per day to assist petitioner with bathing, dressing, and grooming. Assuming it takes fifty minutes to bath, dress, and groom petitioner in the morning, forty minutes are left for the evening and other incidental tasks. Petitioner does not need full assistance; she is able to help with tasks.

When I asked why petitioner needs more time, the response was that it takes time for cooking and light cleaning, and there was also mention that the caregiver needs to massage petitioner. There is no mention of massage in petitioner's care orders, and as noted above, the need for incidental assistance is lessened because petitioner lives with family members. In addition, petitioner's husband has a paid PCW who also assists with incidental tasks.

I conclude, therefore, that the reduction by the DHCAA was justifiable. I note that if the necessary care absolutely cannot be accomplished in the time allotted, or if petitioner has a change that negatively affects her health, a new request or amendment can be filed detailing why more time is needed.

CONCLUSIONS OF LAW

The DHCAA appropriately reduced a request for PCW services based upon petitioner's medical records and living situation.

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 15th day of September, 2014

\sBrian C. Schneider
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 September 15, 2014.

Division of Health Care Access and Accountability