



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/159557

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 16, 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 09, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly modified the Petitioner’s request for personal care worker (PCW) service hours.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Represented by:

[REDACTED] and PCW  
[REDACTED]

Respondent:

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

By: OIG by letter

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

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.

2. Petitioner suffers from rheumatoid arthritis. She has contractures and stiffness in both hands, which limit the use of her hands. (Exhibit 3, pgs. 6-11)
3. On May 14, 2014, Community Home Health Care, Inc. (herein after referred to as Community Home Health) submitted, on behalf the petitioner, a request for prior authorization of 3.5 hours per day of PCW hours for 53 weeks, 1 hour per day of travel time for the PCW for 53 weeks and 24 hours of PCW services to be used PRN, meaning as needed, at a cost of \$35,288.50. (Exhibit 3 pg. 5)
4. The request for services was based upon a Personal Care Screening Tool completed on May 14, 2014. (Exhibit 3, pgs. 6-11)
5. At an unspecified time, Community Home Health withdrew the request for 24 hours of PCW services to be used as needed. This is consistent with the May 14, 2014 Personal Care Screening Tool. (Exhibit 3, pgs. 11 and 170)
6. On June 27, 2014, the Department of Health Services (DHS) sent the Petitioner a letter advising her that the request for services was modified. (Exhibit 3, pg. 166)
7. On June 27, 2014, DHS sent Community Home Health notice of the same. (Exhibit 3, pg. 169)
8. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 5, 2014. (Exhibit 1)

### 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.

Community Home Health, on behalf of Petitioner, requested 3.5 hours per day (24.5 hours / 98 units per week) of Personal Care Worker (PCW) hours, with 7 hours per week travel time for the PCW.

According to the letter from the Department of Health Services, Office of the Inspector General, DHS approved 3.32 hours per day (23.25 hours / 93 units per week) of PCW hours, with 1.75 hours per week of travel time for the PCW.

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, Preferred Home Health, 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. The Personal Care Activity Time Allocation Table is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165*. This chart can also be found at the aforementioned website. A copy of the table was also attached to the OIG letter - Exhibit 2, attachment 5.

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 application of an ACE bandage, are also examined.

The letter from the Office of the Inspector General, indicated that DHS allotted time for Petitioner's ADL's as follows:

1. Bathing: 30 minutes per day x 7 days	210 minutes per week
2. Dressing: 20 minutes per day x 7 days	140 minutes per week
3. Brace Placement:	Zero minutes per week
4. Grooming: 15 minutes x 2 time per day x 7 days	210 minutes per week
5. Eating:	Zero minutes
6. Mobility:	Zero minutes
7. Toileting: 10 min. per episode x 4 episodes per day x 7 days	280 minutes per week
8. Transfers: 30 minutes per day x 7 days	210 minutes per week
Total:	1050 minutes week

With regard to bathing, DHS allowed the maximum time permitted by the Personal Care Activity Time Allocation Table. Petitioner's daughter/PCW indicated that this was acceptable.

With regard to dressing, DHS allowed the maximum time permitted by the PCST instructions and the Personal Care Activity Time Allocation Table. Petitioner's daughter/PCW indicated that this time was acceptable.

With regard to brace placement, which is a subcategory of dressing, DHS did not allow any additional time for this task, because Community Home Health did not obtain a physician's order for this task. Having reviewed the Home Health Certification and Plan of Care submitted by Community Home Health, DHS is correct that the physician did not order PCW time to assist the Petitioner with placement of a brace. (See Exhibit 3, pg. 17) Consequently, it is found that DHS correctly denied PCW time for this task. It should be noted that Petitioner's daughter/PCW testified that the Petitioner has not been wearing a brace and does not need one currently.

With regard to grooming, DHS allowed the maximum time permitted by the PCST instructions and the Personal Care Activity Time Allocation Table. Petitioner's daughter/PCW indicated that this time was acceptable.

With regard to eating, the May 14, 2014 Personal Care Screening Tool indicated that the Petitioner is able to feed herself. At the hearing, Petitioner's daughter/PCW testified that the Petitioner is unable to hold a utensil when her arthritis flares and as such, does need assistance with eating on her worst days.

The Instructions for the Personal Care Screening Tool, which are found in Exhibit 2, attachment 6, indicate that when the need for assistance varies, the screener is to select the level of help that represents the level most needed. (See pg. 2 of 14 of the Instructions) The best estimate given for the frequency with which the Petitioner needs help was, sometimes she can hold a spoon and sometimes she can't.

Given the information in the Personal Care Screening Tool and based upon the lack of evidence to support a finding that the Petitioner is unable to feed herself more than 50 percent of the time, it is found that DHS correctly denied PCW time for eating.

With regard to mobility, Petitioner's daughter/PCW testified that the Petitioner is able to get around the house with her walker. This is consistent with the information in the May 14, 2014, Personal Care Screening Tool. Accordingly, it is found that DHS correctly denied PCW time for this task.

With regard to toileting, DHS allowed all of the time requested per the May 14, 2014 Personal Care Screening Tool. According to that Personal Care Screening Tool, the Petitioner needs assistance with toileting / incontinence care 4 times per day. DHS allowed the maximum time allowed by the Personal Care Activity Time Allocation Table:

$$4 \text{ episodes per day} \times 7 = 28 \text{ episodes per week}$$

$$28 \text{ episodes per week} \times \text{██████████ per episode} = 280 \text{ minutes per week for toileting}$$

Petitioner's daughter/PCW indicated that the time allowed for assisting the Petitioner with using the toilet is correct, but that the Petitioner needs help changing her incontinence product about 3 times per week, when she doesn't quite make it to the bathroom on time. This testimony, is not necessarily inconsistent with the information in the May 14, 2014 Personal Care Screening Tool. Accordingly, it is appropriate to add 45 minutes per week (15 minutes per episode) for assistance with changing incontinence products.

With regard to transfers, Petitioner's daughter/PCW did not dispute DHS's allocation of 30 minutes per day for this task, which was the maximum time allowed for the level of assistance requested by Community Home Health.

With regard to Medically Oriented Tasks, the May 14, 2014 Personal Care Screening Tool indicated that that the Petitioner only needs reminders to take medications, which puts her at assistance level B. Petitioner's daughter/PCW also testified that the Petitioner needs reminders to take her medication. According to the Personal Care Activity Time Allocation Table, no PCW time is allowable for medication reminders. As such, DHS correctly denied PCW time for this task.

Totaling the time foregoing times for ADLs we have

1. Bathing: 30 minutes per day x 7 days	210 minutes per week
2. Dressing: 20 minutes per day x 7 days	140 minutes per week
3. Brace Placement:	Zero minutes per week
4. Grooming: 15 minutes x 2 time per day x 7 days	210 minutes per week
5. Eating:	Zero minutes
6. Mobility:	Zero minutes
7. Toileting:	325 minutes per week
8. Transfers: 30 minutes per day x 7 days	210 minutes per week
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Total:	1095 minutes week

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 lives alone, time equal to 1/3 of the time it actually takes to complete Activities of Daily Living (ADLs) and Medically Oriented Tasks (MOTs) may be allocated.

The actual time needed to complete Petitioner’s ADLs and MOTs was 1095 minutes. (See above) One third of 1095 minutes is 365 minutes. So, Petitioner may receive an additional 365 minutes per week for incidental tasks.

Totaling all of the time allowable for Petitioner we have:

1095 minutes per week for ALDs  
365 minutes per week for incidental activities

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1460 minutes per week ÷ 15 minutes per unit = 97.33 units per week, rounded up to 98 units per week

The Petitioner also disagreed with DHS’s reduction of travel time for the PCW, asserting that the addresses used by DHS were incorrect.

Petitioner lives at [REDACTED]

Petitioner’s daughter/PCW lives at [REDACTED]

With Petitioner’s permission, the correct addresses were put into the Mapquest website and yielded a [REDACTED] mile route, that should take [REDACTED] of travel time, one way. A printout from the website has been marked as Exhibit 4)

Given that it should take [REDACTED] for the roundtrip journey between Petitioner’s home and the home of Petitioner’s daughter/PCW, the 15 minutes per day allowed by DHS for PCW travel time was appropriate.

**I note to the Petitioner that his/her provider will not receive a copy of this Decision. In order to have the services requested here approved, the Petitioner must provide a copy of this Decision to Community Home Healthcare.**

**Community Home Healthcare must then submit a *new* prior authorization request, with a copy of this decision attached, to receive the approved coverage.**

**CONCLUSIONS OF LAW**

1. DHS did not correctly modify the request for PCW services from 3.5 hours per day to 3.32 hours per day.
2. DHS correctly modified travel time allowed for the PCW from 1 hour per day to 15 minutes per day.

**THEREFORE, it is ORDERED**

That Community Home HealthCare, Inc. is authorized to receive payment of 98 units per week / 3.5 hours of PCW services per week.

The petition, in all other regards, 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 22nd day of September, 2014.

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\sMayumi M. Ishii  
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 22, 2014.

Division of Health Care Access and Accountability