



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/159764

PRELIMINARY RECITALS

Pursuant to a petition filed August 8, 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 October 1, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Division correctly denied the petitioner’s prior authorization request for PCW services at the level of 12.5 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. He is certified for MA.

2. In June, 2014, a prior authorization request (#...022) was submitted on the petitioner's behalf for **14** hours weekly of PCW services (plus travel time and PRN visits), beginning July 19, 2014. On July 22, 2014, the Division issued written notice that it was denying the request by approving PCW time of **zero** hours weekly.
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 physician office visit notes did not reflect that the petitioner has any physical impediments to performing self-care tasks, such as bathing, dressing, grooming, eating, etc.
4. The petitioner, age 40, resided with his family in the community when this request was made. He no longer has family residing with him. The petitioner has diagnoses of schizophrenia, hypersomnia with sleep apnea, obesity, asthma, iron deficiency anemia, constipation, angina pectoris, and history of noncompliance with medical treatment. He has functional limitations in the areas of endurance and cognitive deficits.

A state Personal Care Screening Tool (PCST) review was performed by a nurse for the petitioner on June 26, 2014. The PCST program concluded that the petitioner requires 12.5 hours of PCW care weekly, plus annual PRN time. The PCST results declared that the petitioner required PCW physical assistance with bathing daily, upper body dressing daily, and grooming twice daily. He is physically independent when eating, toileting, transferring and in ambulation.

5. Although physical help with bathing might be advisable, the petitioner refuses it. He is independent in the tasks of dressing, grooming, eating, toileting, transferring and ambulation. The petitioner requires the service of others to purchase and prepare food, do laundry, and take/accompany him to medical appointments. The petitioner does not drive and will not take the bus. He also forgets to go to his medical appointments and to do follow-up testing. The petitioner does not require physical help while at the medical appointments (such as with dressing, mobility in the facility, transferring on to the exam table, toileting).

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).

The caregiver testified that, although she thought that bathing assistance was desirable, the petitioner refuses such assistance. There was no other evidence that supported PCW time for care tasks #2 through #12 above. The caregiver did credibly testify to the need for the petitioner to be accompanied to medical appointments. However, once he is at the appointment, he does not require physical help, such as assistance with undressing, toileting, or transfers. This testimony presents a picture that is consistent with the petitioner's diagnoses.

The Department's policy does not allow for payment of PCW time to transport a recipient with unimpaired ambulation/transfer skills to medical appointments:

Topic #2478

Accompanying the Member to Medical Appointments

The BadgerCare Plus Standard plan covers personal care services in which the PCW (personal care worker) accompanies the member to obtain a medical diagnosis and treatment at a facility where the member receives covered services. The purpose of covering a PCW to accompany the member to medical appointments is not to transport (drive) the member to medical appointments, but to assist the member with ADL (activities of daily living) and delegated nursing tasks (*e.g.*, assistance with toileting, dressing/undressing, transferring, and if delegated, tasks such as medication administration).

This policy is not unreasonable in the abstract or in its applicability to this case. A Community Support Program through Milwaukee County may be able to provide an attendant to go with the petitioner to his appointments.

CONCLUSIONS OF LAW

1. The petitioner requires zero 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 20th day of October, 2014

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals
MPApcwMedAppts



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