



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

MPA/160724

PRELIMINARY RECITALS

Pursuant to a petition filed September 19, 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 29, 2014, by telephone.

The issue for determination is whether the Division correctly denied the petitioner's prior authorization request for unspecified, increased personal care worker (PCW) services.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By written submission of Kelly Townsend, RN
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 (CARES # **Redact**) is a resident of Milwaukee County. She is certified for MA.
2. Prior to May 2014, the petitioner was authorized to receive 38.5 hours of PCW time weekly. On May 30, 2014, a prior authorization amendment request (#...**Re...**) was submitted on the

petitioner's behalf for an unspecified increase in weekly hours of PCW services, beginning May 31, 2014. On August 4, 2014, the Division issued written notice that it was slightly increasing her previously approved number of PCW hours, based on its independent review of her submitted medical records.

3. The Division's basis for denial of increased service was that (1) the number of requested hours was unknown and (2) an increase above 44.3 hours was not medically necessary. In particular, the Division concluded that PCW services above 44.3 hours weekly were not needed because the first of two PCSTs did not state that the petitioner could not use her hand to perform upper body dressing or grooming tasks. The Division also noted that a signed physician order for the medically oriented tasks of medication administration and prosthetic placement had not been submitted. Medicaid cannot reimburse a PCW provider for medically oriented tasks unless there is a signed physician order for the task.
4. The petitioner, age 49, resided alone in the community at the time of May authorization submission, but moved into a three bedroom lower level duplex apartment with a friend in November 2014. The petitioner has diagnoses of end stage renal disease, insulin-dependent type II diabetes, congestive heart failure, obesity (260 pounds), hypertension, high cholesterol, hypothyroidism, fibromyalgia, depression, phantom limb pain, below the knee amputation bilaterally, and asthma. Her upper extremity range of motion is normal. She has functional limitations in the areas of incontinence, shortness of breath with exertion, endurance, and ambulation. Also, she goes to dialysis appointments three mornings weekly. Her medical supplies include an electric wheelchair, shower chair, slide board, adult undergarments, oxygen, nebulizer, and a CPAP machine.

Curiously, *two* state Personal Care Screening Tool (PCST) reviews were performed by a home health agency nurse for the petitioner on May 6, 2014. The first PCST program concluded that the petitioner requires **43.0** hours of PCW care weekly. The second PCST concluded that she requires **53.5** hours weekly. At hearing, the petitioner stated that she desires 56 hours of PCW time weekly. The higher PCST results declared that the petitioner required PCW physical assistance with bathing daily, upper and lower body dressing twice daily, grooming twice daily, eating assistance, toileting four times daily, transfers, attachment of a prosthetic, medication assistance, glucometer readings, range of motion exercises, and nebulizer assistance.

5. The petitioner is capable of feeding herself after set up, performing upper body dressing, and grooming herself after set up. There is no signed physician order on file with DHCAA for the tasks of prosthetic placement and medication administration. After reviewing the petitioner's case, DHCAA realized that it had omitted time for nebulizer assistance. After adding in that time, the DHCAA revised its position to approve PCW services at the level of 44.3 hours weekly. The petitioner also receives IRIS support services.

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 authorized the PCW time to the amount it believes is necessary to perform purely PCW tasks. The petitioner contends that s/he needs 56 hours of weekly care time. Her provider failed to identify the amount of PCW time it was requesting, which is highly problematic.

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 petitioner offered hearing testimony, in which she argues that she cannot perform grooming or upper body dressing tasks. Further medical documentation was not submitted. However, the medical documentation of record does not reflect diagnoses that would cause her to be unable to perform these tasks. I agree with the Division's revised determination that she requires the following daily times for activities of daily living (ADL) tasks: bathing – 30 minutes, lower body dressing – 10 minutes, grooming *set up* – 10 minutes, eating *set up* – 15, mobility – 0, toileting – 90 minutes, transfers – 45, medication assistance – 0, glucometer readings – 15, complex positioning – 30, range of motion – 0, prosthetic placement – 10, and nebulizer assistance – 30. These are the Department's maximum standard time amounts for the tasks of bathing, toileting, complex positioning, glucometer readings, prosthetic placement and transfers. These revised amounts bring total ADL time for the week up to 1,195 minutes/33.25 hours weekly.

The Division's policy standard is to add no more than 33% of the ADL time to the authorization or services incidental to ADLs where a live-in caregiver is not present. A live-in caregiver was not present when this matter was adjudicated in August 2014. In this case, that would allow addition of 665 minutes hours weekly to the total. Thus, the Division correctly increased the petitioner's PCW time for the period to 44.3 hours (33.25 + 11.05).

CONCLUSIONS OF LAW

1. The petitioner requires 44.3 PCW hours weekly for the current authorization period, as of August 2014.

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 9th day of December, 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 December 9, 2014.

Division of Health Care Access and Accountability