



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/161207

PRELIMINARY RECITALS

Pursuant to a petition filed October 10, 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) prior authorization request for personal care worker (PCW) services, a hearing was held on November 13, 2014, by telephone.

The issue for determination is whether the agency approved appropriate PCW hours.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[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 is a 22-year-old resident of Oconto County who receives MA.
2. Petitioner is diagnosed with Fragile X syndrome with autistic characteristics, obesity, reflux disease, and anxiety. He uses ankle-foot orthoses for ambulation outside the home. He requires PCW assistance, and until the most recent authorization typically was approved for 35-40 hours per week.
3. On June 3, 2014, [REDACTED] requested 40.5 hours per week PCW services, PA no. [REDACTED]. After reviewing the assessment, the DHCAA granted 19.25 hours per week

effective July 1, 2014. Notably no time was given for eating assistance. ██████ requested an amendment back to the 40.5 hours per week. By a notice dated September 2, 2014 the DHCAA denied the amendment request.

4. Petitioner filed this appeal, noting in particular that petitioner needs assistance with a spoon or fork. For that reason the DHCAA modified the approval to add 20 minutes for day for eating assistance, which increased the authorized hours to 22.75 retroactive to the July 1, 2014 effective date.

DISCUSSION

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.

This office has received a substantial number of appeals of PCW authorization in the past year. It is clear that the Department now is looking much closer at requests than in the past and is approving only necessary services that a non-related caregiver would provide as needed, and thus it is not uncommon for a recipient's services to be reduced even though his or her condition has not changed.

The DHCAA initially approved 19.25 hours of PCW services weekly for petitioner. To reach this figure 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, which the DHCAA's reviewer can then adjust to account for variables missing from the screening tool's calculations. While the tool, as filled out by the assessor, called for 40.5 hours per week, the DHCAA's reviewer cut the authorization in half initially. He then added more hours for a final total of 22.75 hours per week.

Petitioner's mother is also his caregiver. She testified that petitioner requires constant supervision, but as noted in the Department's case summary, PCW hours cannot be approved for supervision alone. In particular, she testified that petitioner will not prepare meals at all, and if he is not hands-on fed he will

eat only junk food. Thus she has to spend substantial time with him at meals, certainly more than 20 minutes per day.

Petitioner's situation is an example of why it is difficult to determine PCW hours when the caregiver is a relative. It is true that petitioner does not prepare meals, but of course he has no need to because his mother is there to prepare them (it is noted that meal preparation is included in the incidental hours that are authorized). Similarly, petitioner's mother feeds him to make sure he eats proper food, but that is a mother doing what is best for her son, not necessary what an objective PCW would do.

The DHCAA can authorize only medically necessary PCW hours. I conclude that the agency has authorized such hours in this case. The issue is not necessarily what is best on a personal level for the recipient, but what is medically necessary for the recipient from an objective standpoint. The agency has followed that standard in this instance.

CONCLUSIONS OF LAW

The agency correctly approved 22.75 hours per week PCW services for petitioner.

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 20th day of November, 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 November 20, 2014.

Division of Health Care Access and Accountability