



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/161284

PRELIMINARY RECITALS

Pursuant to a petition filed October 11, 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 December 02, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department of Health Services (DHS) correctly reduced the Petitioner’s personal care worker (PCW) service hours to 22 hours per month.

There appeared at that time and place 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: 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 (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The Petitioner is 50 years old and lives alone. (Exhibit 3, attachment 6)

3. Petitioner has diagnoses of congestive heart failure, high blood pressure, chronic pain in her left knee, insomnia and depression. (Exhibit 3, pg. 29)
4. Petitioner uses a cane for ambulation (to walk). (Id.; see also Exhibit 2, attachment 6)
5. On August 26, 2014, Allegiance Home Health Care, LLC (Allegiance) completed a Personal Care Screening Tool for the Petitioner. (Exhibit 2, attachment 6)
6. According to the PCST, the Petitioner needed assistance with the following tasks at the following levels:

Task	Level of Help Needed
Bathing Includes one episode of dressing upper and lower body)	Level E
Dressing upper and lower body placement of one wrist and one knee splint	Level E
Grooming	Level F 2x per day
Eating	Level A
Mobility	Level D
Toileting	Level D 2x per day
Transferring	Level D
Medication Reminders	2 x per day
Ointment application	1 x per day

The PCST calculated 29.75 hours per week of PCW services as being necessary to meet Petitioner’s needs.

(Exhibit 2, attachments 6)

7. On August 27, 2014, Allegiance, submitted on behalf of Petitioner, a request for prior authorization of 29.75 hours per week of PCW service at a cost of \$30,940.00. (Exhibit 3, pg. 5)
8. On September 3, 2014, DHS sent the Petitioner a notice, indicating that the requested services had been approved without modification. (Exhibit 3, pgs. 12-13)
9. The September 3, 2014 approval had been issued by [REDACTED] (HP), a privately contracted agency of DHS. (Exhibit 2, pg. 1)
10. On September 25, 2014, DHS sent Allegiance a notice indicating that the request for services was being reviewed because it was equal to or less than the number of hours calculated by the PCST. The notice also requested “clinical information sufficient to verify the need for the requested services.” (Exhibit 3, pgs. 14- 17)
11. On September 30, 2014, DHS sent the Petitioner a notice indicating that it had modified her PCW service request. (Exhibit 3, pg. 47-50)

12. On September 30, 2014, DHS also sent Allegiance notice that it was paying for 29.75 hours of PCW services for nine weeks. Thereafter, it would pay for 21 hours per week, making the change effective on or about October 30, 2014. (Exhibit 2, pg. 1; Exhibit 3, pgs. 52-53)
13. The RN consultant for OIG increased the approved time to 22 hours per week, because he received a supplemental physician's order on or about October 10, 2014, for medication reminders and ointment application, twice per day. (Exhibit 2, pg.7; see also Exhibit 2, attachment 11)
14. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on October 15, 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)

Ordinarily in prior authorization cases, the Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria. This is because the Petitioner is usually seeking approval of a new application for benefits. However, in this case, DHS through its agent, ██████████, already approved the requested services. DHS then later decided to reduce the Petitioner’s services. As such, DHS is the moving party, seeking to change the status quo.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving the reduction of services / benefits, the agency bears the burden of proof.

As discussed above, Allegiance requested 29.75 hours per week of PCW services. DHS reduced Petitioner’s services to 22 hours per week.

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, Allegiance, 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 be found at the aforementioned website. A copy of the table was also attached to the OIG letter, Exhibit 2, attachment 8.

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 assistance with medications.

The letter from the Office of the Inspector General, indicated that DHS allotted the following times for the following activities:

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. Wrist and Knee Brace:	zero minutes per week
4. Grooming: 15 minutes per day, 2x per day x 7 days	210 minutes per week
5. Eating:	zero minutes per week
6. Mobility:	zero minutes per week
7. Toileting: 2x per day x 7 days	140 minutes per week
8. Transferring:	210 minutes per week
9. Medication Reminders / Ointment application 2 x per day	70 minutes per week
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Total:	980 minutes week

With regard to bathing, the Petitioner indicates that 30 minutes per day for bathing is sometimes sufficient, but on other days, bathing may take up to 45 minutes, because she needs to rest. However, Forward Health will not pay for a PCW to wait while the Petitioner is resting; the PCW is expected to attend to incidental tasks, like tidying the bathroom, while the Petitioner is resting. Consequently, it is found that DHS's allotment of 30 minutes per day, 210 minutes per week for this task is appropriate.

The Petitioner was agreeable to the time allowed for dressing. With regard to placement of a wrist and knee brace, DHS correctly denied time for this task, because Allegiance did not list this under the physician's order in the Home Health Certification and Plan of Care. (See Exhibit 2, attachment 4) Covered PCW services must have a written physician's order and a written plan of care. *On-line Provider Handbook topic \$2472 – See Exhibit 2, attachment 10)*

The Petitioner was agreeable to the time allowed for grooming and did not dispute the fact that she is able to feed herself.

With regard to mobility, the Petitioner asserts that she needs assistance with walking, because she is at risk of falling. The PCST indicated, "PT requires hands on assist with mobility for safety and to ensure task completion. PT has CHF, chronic fatigue and dizziness and requires rest period between tasks to ensure completion. Requires Needs assist for safety / to prevent falls."

The only medical record that has been provided is a progress note for a July 21, 2014 doctor's appointment. That document does not list a diagnosis of chronic fatigue, nor a history of dizziness or falls. See Exhibit 3, pgs. 29-43) The note regarding the medical exam does not document an unsteady gait or difficulty walking. Accordingly, it is found that DHS correctly removed time for assistance with mobility. Id.

With regard to toileting, the Petitioner did not dispute the time allowed for that task, stating that she wasn't sure how long it took.

With regard to transferring, the Petitioner agreed that she needs assistance with this task. As such, it is found that 210 minutes per week for assistance getting out of bed and similar tasks is sufficient.

With regard to medication reminders, these were not listed in the physician’s order in the Home Health Certification and Plan of Care. However, on October 10, 2014, Allegiance submitted a supplemental order, signed by a doctor, indicating the Petitioner needs medication reminders twice per day and that she needs assistance applying an ointment to her hands and feet twice per day. (Exhibit 2, attachment 11) As such, DHS correctly allowed 10 minutes per day, 70 minutes per week for this task.

Based upon the foregoing, it is found that DHS correctly allowed 980 minutes per week for assistance with Petitioner’s activities of daily living and medically oriented tasks.

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. (See Exhibit 2, attachment 12)

One third of 980 minutes is 326.67 minutes. So, Petitioner may receive an additional 326.67 minutes per week for incidental tasks.

Totaling all of the time allowable for Petitioner we have:

980 minutes per week for ALDs
326.67 minutes per week for incidental activities

1306.67 minutes per week ÷ 15 minutes = 87.11 units rounded up to 88 units per week

88 units per week is equal to 22 hours per week.

CONCLUSIONS OF LAW

DHS correctly reduced the Petitioner’s personal care worker (PCW) service hours to 22 hours per month.

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 Milwaukee,
Wisconsin, this 15th day of January, 2015.

\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 January 15, 2015.

Division of Health Care Access and Accountability