



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact
Redact

DECISION

MPA/161730

PRELIMINARY RECITALS

Pursuant to a petition filed November 03, 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 telephonic hearing was held on November 25, 2014, at Milwaukee, Wisconsin.

During that hearing, petitioner requested that the record be held open for documents to be submitted to the Division of Hearings and Appeals (DHA), and then for those documents to be sent to the Office of the Inspector General (OIG) for a reconsideration decision with an opportunity for a reply by Ms. Redact. This Administrative Law Judge (ALJ) sent a February 4, 2015 cover letter to Mr. Redact at OIG with a copy of the 9 pages of documents which were received at DHA, and marked as Exhibit 3. In that same letter, this ALJ requested that Mr. Redact review the enclosed documents, and submit a reconsideration summary to me at the Division of Hearings and Appeals by February 18, 2015 with a copy of that reconsideration summary letter to be sent to the petitioner. The petitioner was granted until February 25, 2015 to submit to DHA any written response to Mr. Redact's reconsideration summary.

Mr. Redact timely submitted a brief reconsideration to DHA and petitioner which indicated that OIG had already reviewed the information submitted as Exhibit 3, and that OIG had already submitted its response in its November 12, 2014 summary to DHA and petitioner. The petitioner failed to submit to DHA any response to that reconsideration even by the date of this decision.

The issue for determination is whether the Department correctly modified (reduced) the petitioner's prior authorization (PA) request for personal care worker (PCW) hours from 26.25 to 17.5 hours per week plus 1.75 hours of PCW travel time per week.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact
Redact

Respondent:

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

By: Redact Redact, nurse consultant  
 Office of the Inspector General (OIG)  
 1 West Wilson Street, Room 272  
 P.O. Box 309  
 Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:  
 Gary M. Wolkstein  
 Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # Redact) is a 55 year old resident of Milwaukee County who resides with her family. The petitioner's 25 year old daughter (Redact) has been her paid personal care worker (PCW) for the past three years.
2. The petitioner has the following diagnoses: obesity, hypertension, congestive heart failure, diabetes mellitus, pain, and sleep apnea.
3. The petitioner's functional limitations are endurance, some problems with ambulation, and dyspnea (shortness of breath) with minimal exertion.
4. Petitioner sometimes needs and uses a cane or wheeled walker for assistance with mobilization, a shower chair, raised toilet seat and CPAP for her sleep apnea.
5. On or about September 1, 2014, the petitioner's fee-for-service provider, Community Home Health Care, Inc. requested prior authorization (PA) for MA coverage of personal care worker (PCW) hours of 26.25 hours per week for 53 weeks plus 1.75 hours per week of PCW travel time at a requested cost of \$35,937.75. See Exhibit 2.
6. The petitioner's Personal Care Screening Tool (PCST) was completed by screener, Community Home Health Care RN Redact on September 9, 2014 at petitioner's home. See Exhibit 2. In that PCST, the screener generally evaluated the petitioner's needs to be 26.5 hours per week of personal care worker hour services. The alleged assistance with activities of daily living (ADLs) included bathing with partial physical assistance of another person. The PCST also indicates petitioner needs partial physical assistance to dress her upper and lower body in the PM daily. The PCST indicates the petitioner needs partial physical assistance to groom herself twice daily. Petitioner feeds herself with or without adaptive devices. The petitioner is able to move about the home by herself, but requires intermittent supervision or cueing. In regard to toileting, the document indicated that petitioner needs physical help from another person to use the toilet, and/or change personal hygiene products four times per day. Petitioner needs reminders to take her medication three times daily. Petitioner was not documented as having behaviors or medical conditions that interfere with the PCW's assistance with cares or present unique challenges which results in a long term need for extra time to perform cares.
7. In her September 22, 2014 occupational therapy (OT) evaluation by OT Re Redact, Ms. Redact persuasively questioned the petitioner reliability and credibility as a reporter, and whether petitioner exaggerated her physical needs for PCW services such as ambulation (petitioner was noted to have walked without any assistance of any kind for 150 feet from the reception area to the evaluation area and observed transferring into an armed chair "with ease)." See Exhibit 1, Attachment 8.
8. Based upon her Personal Care Activity Time Allocation Table and her PCST, the petitioner was approved for the following reduced amount of 17.5 hours of PCW services per week: a) Bathing daily – 210 minutes per week (30 minutes per day); b) Dressing Upper and Lower Body – 140 minutes per week – petitioner needs assistance once per day for dressing; c) Grooming twice

daily – 210 minutes per week; d) Eating assistance – 0 – petitioner is able to eat independently with or without any adaptive eating utensils; e) Toileting – 280 minutes per week; and f) Services Incidental to tasks – 210 minutes per week. The petitioner's total ADL and MOT (medically oriented services) were 17.5 hours per week.

9. On review of the PA Request, the Office of the Inspector General (OIG) modified the prior authorization request from the requested 26.5 to 17.5 PCW hours per week based upon the Personal Cares Screening Tool (PCST) assessing the petitioner's PCW needs and further investigation of that assessment, based upon Findings of Fact #7 and #8 above and OIG's November 12, 2014 detailed summary letter by RN Redact Redact (Exhibit 1).
10. OIG issued a letter Notice to the petitioner informing her that her PA requested personal care worker services had been reduced from 26.5 to 17.5 hours per week, and then approved as modified.
11. During the hearing, petitioner did not establish with any reliable evidence or documentation that petitioner has PCW needs above the approved amount of 17.5 hours per week.

### DISCUSSION

The Office of the Inspector General (OIG) may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat. §§ 49.46(2) and 49.47(6)(a), as implemented by Wis. Admin. Code Ch. DHS 107. Some services and equipment are covered if a prior authorization request is submitted and approved by the Division in advance of receiving the service. Finally, some services and equipment are never covered by the MA program.

In the case of PCW services, MA pays only for medically-oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his place of residence in the community. Wis. Admin. Code § DHS 107.112(1)(a). **Covered PCW services include only 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(1)(b).

Further, **PCW services must be provided according to a written plan of care that is based on an evaluation made by an RN who has visited the recipient's home. Wis. Admin. Code §§ DHS 107.112(1)(a) & (3)(b).**

During the November 25, 2014 hearing, the petitioner argued in vague terms that she felt that she needed more than 17.5 hours per week of PCW hours. The petitioner did not offer any new evidence into the hearing record to support her argument either during the hearing or while the record was held open. See above Preliminary Recitals. Petitioner was unable to specifically indicate with any reliability an area where the approved 17.5 hours of PCW hours was insufficient to meet the petitioner's PCW physical limitations or medical needs in any of the above 13 covered PCW services in which the provider had submitted an order with a plan of care. The submitted PA documentation did not support the medical necessity for any specific need for the petitioner's PCW hours to be increased above 17.5 hours per week.

On the other hand, OIG nurse consultant, **Redact** **Redact**, provided specific evidence and documentation to establish that the above 13 covered PCW services could be completed for petitioner in the reduced amount of 17.5 hours of PCW hours each week for the petitioner. See above Findings of Fact and Exhibit 1. In fact, Mr. **Redact** correctly argued that petitioner's desire to have "conversations" with her daughter as paid as PCW services is clearly not a covered service for her PCW to provide companionship for the petitioner.

The petitioner was unable to refute the Department's persuasive written arguments and exhibits. Furthermore, petitioner was unable to establish that she has any covered PCW needs that are not being met by the 17.5 PCW hours approved by the Department. Accordingly, based upon review of the entire hearing record, I conclude that the Department correctly modified (reduced) the petitioner's prior authorization request for personal care worker (PCW) hours from 26.25 to 17.5 hours per week plus 1.75 hours of PCW travel time per week.

### CONCLUSIONS OF LAW

The Department correctly Department correctly modified (reduced) the petitioner's prior authorization (PA) request for personal care worker (PCW) hours from 26.25 to 17.5 hours per week plus 1.75 hours of PCW travel time per week.

**THEREFORE, it is**

**ORDERED**

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 27th day of March, 2015

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\sGary M. Wolkstein  
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 March 27, 2015.

Division of Health Care Access and Accountability