



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

In the Matter of

██████████
██████████████████
████████████████████

DECISION

MPA/██████████

PRELIMINARY RECITALS

Pursuant to a petition filed November 07, 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 February 10, 2015, at Green Bay, Wisconsin.

The issue for determination is whether the Department correctly modified PA request #5141120104 for PCW hours from the requested 28 hours per week to the approved 17.5 hours per week.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████████████
████████████████████

Petitioner's Representative:

Attorney Yeng Lee
3616 West National Avenue, Suite 201
Milwaukee, WI 53215-1027

Respondent:

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

By: Robert Derendinger, 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:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of ██████████

2. On April 22 2014, the Department received a PA request for PCW services from Wisconsin Home Health Care requesting 28 hours per week for petitioner.
3. The PA request was approved from 4/22/14 to 4/21/15.
4. On 7/23/14, Department two nurses visited petitioner to conduct an in-home evaluation and to assess the medical necessity of the PCW hours approved through the PA.
5. The provider had requested, and the Department had approved 20 minutes per day for mobility and 30 minutes per day for transferring. During the visit, the nurses observed that the petitioner was independent with mobility and transferring. The Department determined that services were necessary and justified as set forth in ex. #1 at pp. 7-9.
6. The provider had requested, and the Department had approved twice daily assistance with dressing. After the visit, the Department determined that because once daily dressing included with bathing that only once daily assistance was justified.
7. The provider had requested 15 minutes two times per day for grooming. The Department had approved that. At the visit, petitioner stated that he is able to brush his own teeth. The Department evaluation determined that a total of 20 minutes per day for grooming was appropriate.
8. The Department determined that 17.5 hours was sufficient to meet petitioner's needs.
9. On September 29, 2014, the Department sent notice informing petitioner that it would be approving 17.5 hours.
10. Petitioner appealed.

DISCUSSION

MA coverage of PCW services is described in the Wis. Adm. Code, §DHS 107.112. Covered services are specified in subsection (1), and are defined generally 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." Examples of covered services are assistance with bathing, with getting in and out of bed, with mobility and ambulating, with dressing and undressing, and meal preparation. The Code also provides that, "No more than one-third of the time spent by a personal care worker may be in performing housekeeping activities." Wis. Adm. Code, § DHS 107.112(3)(e).

In determining the number of PCW hours to authorize, the OIG uses the standard above along with the general medical necessity standard found at Wis. Adm. Code, § DHS 101.03(96m). Essentially the medical necessity standard requires a service to be basic and necessary for treatment of an illness, not necessarily the best service possible, and not just for convenience. To determine the number of PCW hours to authorize the OIG uses the Personal Care Screening Tool (PCST), a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The PCST allots a specific amount of time in each area the recipient requires help, which the OIG's reviewer can then adjust to account for variables missing from the screening tool's calculations.

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).

It is petitioner's burden to establish the necessity of the requested time. At the time of hearing, petitioner's caregiver testified that she has been taking care of petitioner for four years. She stated that he can walk about his apartment but he needs assistance to sit down. She stated that she has observed petitioner fall and that he would fall 6 to 7 times per week if she were not there. Petitioner also stated that cannot dress his lower body, and he needs some assistance with buttoned shirts. She testified that petitioner needs assistance brushing his teeth. These statements are contrary to the observations of the nurses and some of petitioner's statements to them. Most notably, the nurses reported that they observed petitioner get up out of his chair and sit back down without assistance. I cannot explain that inconsistency. I very much doubt that the nurses fabricated their observations or reported statements by petitioner. But, I would also expect that the nurses would recognize a person who is likely to fall 6 or 7 times in a week without assistance. I can surmise that petitioner's condition can vary at times – that he needs more assistance during days or weeks when he is feeling poor or more frail. The Department nurse consultant explained that this is the reason the PRN hours can be approved. Petitioner could use such hours for those occasions when he needs additional support. And, at those times that he is feeling stronger, as when the nurses visited, he does not need to use those hours. At this point, 24 hours per year have been approved as PRN time. If petitioner requires more then he can request it. But, on this record, petitioner failed to convince me that he needs as much help as the caregiver stated.

CONCLUSIONS OF LAW

The Division did not err in modifying the PA request.

THEREFORE, it is

ORDERED

That this appeal 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 12th day of March, 2015

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 12, 2015.

Division of Health Care Access and Accountability
Attorney Yeng Lee