



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

MPA/161992

PRELIMINARY RECITALS

Pursuant to a petition filed November 13, 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 (Division or DHCAA) in regard to Medical Assistance (MA), a hearing was held on December 10, 2014, by telephone. At the petitioner’s request, the hearing record was held open for the petitioner’s submission of documentation of her left rotator cuff tendonitis; that document was received.

The issue for determination is whether the Division correctly approved only a portion of the personal care worker (PCW) hours requested by the petitioner.

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 Redact, RN BSN
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. On October 15, 2014, a prior authorization request (#...Redacted...) was submitted on the petitioner's behalf for 7.0 hours weekly of PCW services for 53 weeks, beginning October 7, 2014. Subsequently, the Division issued notice that it was "modifying" the request by approving PCW time of 7.0 hours weekly, beginning October 14, 2014, for 17 weeks.
3. The Division's basis for service reduction was that the duration of the requested hours was not medically necessary. In particular, the Division concluded that this level of PCW services was not needed beyond 17 weeks because the PCST did not state that the petitioner has tried and failed to use adaptive equipment when bathing (e.g., shower chair, transfer bench, grab bars, adaptive shower aids). Purchase of adaptive equipment is less costly to the MA program than ongoing PCW help for bathing. The 17 weeks were approved to allow the petitioner a chance to procure needed adaptive bathing aids and try using them.
4. The petitioner, age 44, resides with her family (son) in the community. The petitioner has diagnoses of degenerative disk disease, bulging disks, chronic pain, cysts, and tendonitis in her left shoulder. She has functional limitations in the areas of endurance and shortness of breath upon exertion.

*The petitioner's physician plan of care only calls for assistance with bathing for this patient. A state Personal Care Screening Tool (PCST) review was performed by a nurse for the petitioner on September 30, 2014. The PCST program concluded that the petitioner requires 7.0 hours of PCW care weekly. The PCST results declared that the petitioner required PCW physical assistance with bathing daily, but that she was independent with upper/lower body dressing, grooming, feeding, toileting, transfers, ambulation, and taking her oral medications. The patient was noted to be appropriately oriented. The specific bathing help needed was to get in and out of the tub and washing her back.*

5. The petitioner requires daily physical assistance with bathing. She does not require physical help with dressing grooming, eating, toileting, transfers, taking medication, and ambulation. The MA program has no record of MA payments for adaptive shower aids for the petitioner, such as a shower chair, transfer bench, grab bars, or adaptive shower aids. The only current durable medical equipment noted for the petitioner is possible use of a cane.

### 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 reduced the duration of the PCW time to the amount it believes is necessary to trial the use of adaptive shower aids. The petitioner contends that s/he needs all of, or more than, the requested care time.

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 testified in support of more PCW time for upper body dressing and grooming, due to pain/construction in her left shoulder. She supplied updated medical records to corroborate mild tendonitis in the supraspinatus tendon. However, her doctor's submitted plan of care only called for bathing assistance. Therefore, the Department reasonably concluded, and I agree, that the petitioner established that she requires the following daily times for activities of daily living (ADL) tasks:

bathing – 60 minutes  
 upper body dressing – 0 minutes  
 grooming – 0 minutes  
 eating – 0  
 mobility – 0  
 toileting – 0 minutes  
 transfers – 0.

The above is the Department's maximum standard time amount for the task of bathing.

The petitioner has the burden of proving, by a preponderance of the credible evidence, that she requires the requested services. The Department reasonably asserts that the petitioner, who is not elderly or mentally disabled, should attempt the use of showering with adaptive aids before a year-long authorization for bathing assistance is granted. The Department's assertion is reasonable. The petitioner offered no counter to the Department's assertion regarding the duration of the service. She has not met her burden, and the Department's position is upheld here.

**CONCLUSIONS OF LAW**

1. The petitioner requires 7.00 PCW hours weekly for 17 weeks, as authorized by the Department.

**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 27th day of January, 2015

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\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 January 27, 2015.

Division of Health Care Access and Accountability