



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

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In the Matter of

[REDACTED]

DECISION

MPA/162516

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 9, 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 (DHCAA or Division) in regard to Medical Assistance (MA), a hearing was held on January 27, 2015, by telephone. The hearing record was held open for a submission from the petitioner, which was received. Upon reviewing the post-hearing submission, the Division revised its position, per a letter dated February 3, 2015.

The issue for determination is whether the Division correctly approved the petitioner’s prior authorization request for PCW services at the level of 7.75 hours weekly. The authorization was revised post-hearing to the level of 27.75 hours weekly, effective October 29, 2014.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

By:

[REDACTED]

Respondent:

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

By written submission of Sharon Beck, 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 is a resident of Dane County. She is certified for MA.
2. In September 16, 2014, a prior authorization request (#... [REDACTED]) was submitted on the petitioner's behalf for **45.5** hours weekly of PCW services, beginning September 11, 2014. On October 30, 2014, the Division issued written notice that it was "modifying" the request by approving PCW time of **7.75** hours weekly.
3. The Division's basis for service denial was that the number of requested hours was not medically necessary. In particular, the Division concluded that this level of PCW services was not needed because the PCST did not state that the petitioner needs adaptive aids for eating, or ambulation assistance. Also, the Division's review of notes from medical providers over the prior year did not reflect limitations of strength or range of motion that are consistent with needing physical help with grooming, eating, toileting, transfers or ambulation. Finally, the Division did not believe that the petitioner has either a rare medical condition or behavioral problem that warrant an increase in care time with a multiplier in the care time formula.
4. The petitioner, age 75, resides with her primary caregiver (her daughter) in the community, beginning in late October 2014. The petitioner has diagnoses of osteoporosis, shoulder rotator cuff pain, back pain, tendonitis, non-traumatic right superior and inferior pubic rami fractures (10/29/14), type II diabetes, tinnitus, hearing loss, hypertension, migraine headaches, anemia, depression, and post-traumatic stress disorder. She has functional limitations in the areas of use of her hands, dyspnea, hearing, and ambulation. Also, she does not read or write English, and therefore cannot read her prescription labels. Her durable medical equipment includes hearing aids, eye glasses, a glucose monitoring machine, gait belt, walker, wheelchair, and borrowed shower stool.

A state Personal Care Screening Tool (PCST) review was performed for the petitioner by a nurse on September 11, 2014. The PCST program concluded that the petitioner requires 47.0 hours of PCW care weekly. The PCST results declared that the petitioner required PCW physical assistance with bathing daily, upper and lower body dressing twice daily (6 days weekly), grooming twice daily, feeding, toileting six times daily, taking medication, and transfers. She was scored as independent in ambulation.

5. Since October 29, 2014, the petitioner requires daily physical assistance with bathing upper/lower body dressing (6 days weekly), grooming, toileting, transfers and ambulation. The petitioner also requires the service of others to purchase and prepare her food, do laundry, clean her residence, remember medications, and take/accompany her to medical appointments. The prior authorization request did not include a physician order for medication administration.
6. The petitioner's depression and PTSD diagnoses are not rare medical conditions. However, the manifestations of these conditions are behaviors that interfere with the performance of ADLs at least once per week. *E.g.*, the petitioner will declare that she is "waiting to die," and will refuse to eat or participate in care.
7. Post-hearing, the Division revised its position, based on change in condition and updated information. Per its February 3, 2015 letter, the Division is willing to authorize 27.75 PCW hours effective October 29, 2014. The Division continues to assert that the petitioner does not require physical assistance with eating, cannot have medication assistance time because it was not ordered by a physician, and that the "difficult behavior" multiplier is not warranted.

## DISCUSSION

### I. INTRODUCTION

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 petitioner bears the burden of establishing, by a preponderance of the credible evidence, that all of the requested care is needed.

The Department asserts that it has reduced the PCW time to the amount it believes is necessary to perform purely PCW tasks. The petitioner contends that s/he needs all of 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). For tasks #1 through #4, #6, #8, #9, and #12, the Division's medical professionals have calculated typical task performance times, and placed them in a policy reference document, *Personal Care Activity Time Allocation Table*. Task performance times from the *Table* will be referenced below.

## II. PCW TIME PRIOR TO 10/29/14.

Through caregiver testimony and additional documents from medical professionals presented at hearing, the petitioner established that she needed the following daily times for activities of daily living (ADL) tasks for the September 11 through October 28, 2014 period:

bathing – 30 minutes  
 dressing – 20 minutes (6 days)  
 grooming – **30** minutes  
 eating – 0  
 mobility – 0  
 toileting – 0  
 transfers – 0  
 medication assistance – 0

The Division has conceded that the petitioner needed the above time allotments for bathing and dressing. To that amount, this Judge added the standard maximum for grooming. The petitioner has a torn rotator cuff that limits her ability to raise her hands to her head and perform grooming tasks. Also, an occupational therapy evaluation from February 2014 revealed that the petitioner had right (dominant hand) grip strength and lateral pinching ability at three standard deviations below the mean, left grip strength at one standard deviation below the mean, and left lateral pinching ability at two standard deviations below the mean for her age. This limitation in the ability to groom was also observed by the PCST nurse screener.

Feeding time was not granted because the petitioner is able to use a spoon and physically feed herself. The PCST nurse screener observed the petitioner walk and did not conclude that physical assistance was needed for that task. Based on her observation, this Judge did not add time for in-home mobility through October 28. The screener recommended physical help for toileting and transfer “task completion,” but the recommendation was not supported by the other reviewed medical documentation for dates prior to the October 29 fracture. Time for medication administration was also not added, because the authorization request did not contain a physician order for this service. *See, Department Exhibit 2, Prior Authorization/Care Plan Attachment, Section IV-Orders.*

The above task minutes total 540 weekly. Use of the “difficult behavior” multiplier (1.25) is warranted for recalcitrance related to depression and PTSD. In the *PA/CPA*, the treating physician noted, “client reported feeling hopeless...” The caregiver also reports that the petitioner no longer attends her support group meetings at [REDACTED]. The multiplier brings the minutes total to 675. The Division’s policy standard is to add no more than 33% of the ADL time to the authorization or services incidental to ADLs where a live-in caregiver is *not* present. In this case, that would allow addition of 223 minutes weekly, for an 898 minutes/60 units/15.0 hours weekly total.

## III. PCW TIME FROM 10/2914 FORWARD.

The petitioner fell and broke her pelvis on October 29, 2014. This event adversely affected her ability to transfer and ambulate. *E.g.*, the caregiver now keeps a hand on her throughout transfers and ambulation. This also prompted her caregiver to move in with her, due to her increased care needs. Through hearing evidence, the petitioner established that she requires the following daily times for activities of daily living (ADL) tasks from October 29, 2014 onward:

bathing – 30 minutes  
 upper body dressing – 20 minutes (6 days, per PCST)  
 grooming – 30 minutes

eating – 0  
 mobility – **20**  
 toileting – **90** minutes  
 transfers – 30  
 medication assistance – 0  
 (Areas of change from Division’s revised position in bold).

These are the Department’s maximum standard time amounts for the tasks of bathing, dressing, grooming, mobility, toileting and transfers. These revised amounts bring total ADL time for the week up to 1,520 minutes weekly. Use of the “difficult behavior” multiplier (1.25) creates a subtotal of 1,900 minutes.

The Division’s policy standard is to add no more than 25% of the ADL time to the authorization or services incidental to ADLs where a live-in caregiver is present. In this case, that would allow addition of 475 minutes weekly to the total. Thus, I will be increasing the petitioner’s PCW time for the period to 2,375 minutes/158 units/39.5 hours.

***Note to Petitioner:** Your provider will not receive a copy of this Decision. In order to have the service requested here, you must provide a copy of this Decision to Milwaukee Care Agency LLC. The provider must then submit a new prior authorization request to receive the approved service.]*

### **CONCLUSIONS OF LAW**

1. The petitioner required 15.00 PCW hours weekly for the September 11, 2014 through October 28, 2014 period.
2. The petitioner requires 39.5 PCW hours from October 29 2014 through the end of the current authorization period.

**THEREFORE, it is**

**ORDERED**

That Milwaukee Care Agency LLC is hereby authorized to provide the petitioner with 15.0 PCW hours weekly for the September 11 through October 28, 2014 period, and 39.5 hours from October 29, 2014 onward, and to submit its claim, along with a copy of this Decision and a new prior authorization request, to ForwardHealth for payment. In all other respects, 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**

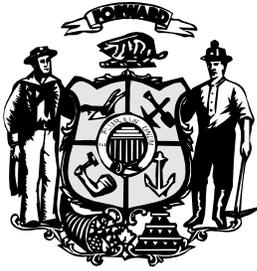
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 4th day of February, 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 February 4, 2015.

Division of Health Care Access and Accountability  
Attorney Kelly Van Sicklen