FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MPA/162832

PRELIMINARY RECITALS

Pursuant to a petition filed December 19, 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 04, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly modified the PA request for PCW services from 18 hours to 7 hours per week.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Robert Derendinger, RN (in writing)
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 (CARES # [redacted]) is a resident of Milwaukee County.
2. Petitioner's provider requested 18 hours per week of PCW care.
3. The Department reviewed the case and records.

4. The Department approved 7 hours per week.

5. 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 explained that he is a paraplegic and states he needs at least 35-45 minutes per day for bathing (including dressing). He also states that he is incontinent 3 to 4 times per week which requires clothing changes and bedding changes. Petitioner states that he is independent in his wheelchair and can transfer himself. He is eating regular food and can feed himself. Petitioner did not offer testimony that explains why the Department's calculation of need under the PCST was flawed. She argued only that more time is needed for all tasks. He did not articulate what quantity of additional time is needed for each task or what specific behaviors justify more time than the PCST allows. Petitioner had a copy of the nurse

consultant's letter (ex. #1) prior to the hearing, yet petitioner offered no specific rebuttal to any of the points or time calculations offered by the Department. Petitioner must offer some specificity and evidence to support the requested time. Petitioner only made general and unspecific arguments that the amount of time approved is not enough. It appears that the petitioner's concern is that there is no PCW who wants to work for the petitioner if only one hour is allowed per day. But, the ability to convince a PCW to commit to the job with a limited amount of hours is not a factor that is considered in approving a PA request.

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 5th day of March, 2015

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\sJohn P. Tedesco
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 5, 2015.

Division of Health Care Access and Accountability