



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

HMO/[REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 27, 2014, under Wis. Stat., §49.45(5)(a), to review a decision by the iCare HMO to reduce a Medical Assistance (MA) authorization request for personal care worker (PCW) services, a hearing was held on February 17, 2015, by telephone. A hearing set for January 20, 2015 was rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly determined PCW hours.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

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

By: Atty. Elizabeth Bartlett  
iCare  
1555 N. Rivercenter Dr., Suite 206  
Milwaukee, WI 53212

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of [REDACTED] who receives MA within the iCare HMO.
2. In August, 2013, Trinity Home Health Care requested HMO authorization for 4.25 hours per day PCW services. The HMO granted 3 hours per day. Petitioner did not appeal. Trinity thereafter filed additional requests in November, 2013, February, May, and August, 2014. The requests all were for 4.25 hours per day PCW services, and the information in all the requests was identical to

the original request filed in August, 2013. The HMO consistently granted 3 hours per day without appeal. The HMO sent its own nurse to reassess petitioner in September, 2014 with no changes noted.

3. In November, 2014, Trinity again filed the identical request for 4.25 hours per day PCW services. With no changes noted, the HMO again granted 3 hours per day by a notice dated November 12, 2014. Petitioner filed this appeal and also filed a grievance with the HMO.
4. The HMO determined the 3 hours per day by allowing 30 minutes for assistance with bathing, 20 minutes for dressing, 10 for placement of prostheses, 60 for grooming, 20 for mobility, and 40 for incidentals. The assessments by the HMO nurses showed petitioner to be independent in toileting.
5. The grievance committee added 45 minutes per day to the request for assistance with toileting based upon statements by petitioner and her PCW.

### DISCUSSION

Under the discretion allowed by Wis. Stat., §49.45(9), the Department now requires most MA recipients to participate in HMOs. Wis. Admin. Code, §DHS 104.05(2)(a). MA recipients enrolled in HMOs must receive medical services from the HMOs' providers, except for referrals or emergencies. Admin. Code, §DHS 104.05(3).

The criteria for approval by a managed care program contracted with the DHCAA are the same as the general MA criteria. See Admin. Code, §DHS 104.05(3), which states that HMO enrollees shall obtain services "paid for by MA" from the HMO's providers. The department must contract with the HMO concerning the specifics of the plan and coverage. Admin. Code, §DHS 104.05(1).

If the enrollee disagrees with any aspect of service delivery provided or arranged by the HMO, the recipient may file a grievance with the department, appeal to the Division of Hearings and Appeals, or both.

Personal care services are "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." Wis. Admin. Code §DHS 107.112(1)(a). Covered services include 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(b).

Personal care workers can spend no more than one-third of their time performing housekeeping activities. Like all medical assistance services, PCW services must be medically necessary and cost effective. Wis. Admin. Code, §DHS 107.02(3)(e)1 and 3.

The Department now uses the Personal Care Screening Tool, a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The screening tool allots a specific amount of time in each area the recipient requires help, which the agency's reviewer can then adjust to account for variables missing from the screening tool's calculations.

As noted in the findings, the grievance committee brought the authorization for PCW services up to 3.75 hours per day. It is unclear why that was done because the evidence before the committee is not in this hearing record, and petitioner's PCW did not testify in this hearing. Petitioner noted in her appeal letter that she has had difficulty since a hospitalization in August, 2014, and the committee apparently accepted that evidence. Troubling to me is that the authorization request filed by Ti [REDACTED] in November, 2014 did not note any changes due to the August hospitalization, and typically it is the provider's duty to justify services. See Wis. Admin. Code, §DHS 107.02(3)(d)6.

Based on the record before me, I am unable to authorize additional PCW time. Petitioner testified that even at 3.75 hours per day, her PCW is unable to complete her tasks, but there is no medical evidence supporting that testimony. The provider, in its November, 2014 authorization request, did not note changes in petitioner's condition that would warrant additional time, and there was no additional evidence presented at the hearing that would warrant adding additional time. I conclude, therefore, that the determinations made by the HMO must be upheld, and the appeal will be dismissed as no additional time other than the amount awarded at HMO level is warranted.

### CONCLUSIONS OF LAW

The amount of PCW time authorized for petitioner by the HMO is sufficient based upon the submissions by the provider and the evidence presented to the Division of Hearings and Appeals.

**THEREFORE, it is**

**ORDERED**

That 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**

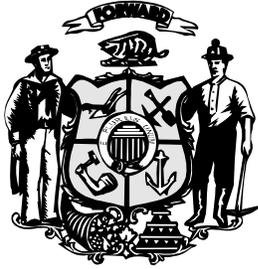
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 24th day of February, 2015

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\sBrian C. Schneider  
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 24, 2015.

iCare  
Division of Health Care Access and Accountability