



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/164473

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 04, 2015, 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 May 07, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner has submitted evidence sufficient to demonstrate that personal care worker (PCW) hours may be paid for by the Medicaid program.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Sharon Beck, 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:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.

2. A prior authorization (PA) request seeking Medicaid payment for 17.5 hours (or 70 units with each unit = 15 minutes) per week of personal care worker (PCW) services plus 7 hours (28 units) of travel time was filed on behalf of Petitioner on or about September 17, 2014. The total cost was noted to be \$25,320.75. The requesting provider is [REDACTED]. The request was for 53 weeks commencing November 15, 2014. The request was returned to the provider for more information but there was no response and the filed closed out without a denial to Petitioner. Once that was realized, the matter reopened and a notice was sent to Petitioner dated January 20, 2015. He timely appealed that notice.
3. Petitioner is 41 years of age ([REDACTED]). He lives in the community in one unit of a duplex with his sister in the other unit. He had both hands amputated in [REDACTED] in the 1990s. He does have a bilateral prosthetics, including an electric pair provided to him in 2014.
4. This PA for PCW services was denied by the Department. It concluded that Petitioner is fully independent with his prosthetics.

### DISCUSSION

When determining whether to approve any medical service, the OIG must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, § DHS 107.02(3) (e)*:

(e) *Departmental review criteria.* In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
  2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
  3. Is appropriate with regard to generally accepted standards of medical practice;
  4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
  5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
  6. Is not duplicative with respect to other services being provided to the recipient;

7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

*Wis. Admin. Code, §DHS 101.03(96m).*

Also, the following Administrative Code provision is relevant here:

**DHS 107.112 Personal care services. (1) COVERED SERVICES.** (a) 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. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care. The personal care worker shall be assigned by the supervising registered nurse to specific recipients to do specific tasks for those recipients for which the personal care worker has been trained. The personal care worker's training for these specific tasks shall be assured by the supervising registered nurse. The personal care worker is limited to performing only those tasks and services as assigned for each recipient and for which he or she has been specifically trained.

(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(1)(a) and (b).*

I note at this point that the Petitioner has the burden of proving that the requested therapy meets the approval criteria and that the standard level of proof applicable is a "preponderance of the evidence". This legal standard of review means, simply, that "it is more likely than not" that Petitioner and/or his/her representatives have demonstrated that the requested services meet the criteria necessary for payment by the Wisconsin Medicaid program. It is the lowest legal standard in use in courts or tribunals.

The Department provided a letter (Ex # 3) that detailed its rationale for modifying this request for personal care services. It need not be reproduced here. It provides a significant amount of detail as to why it denied this request for personal care worker services.

Petitioner testified that he cannot wear his prosthetics all day and that he cannot get them wet, that he needs help with teeth brushing as he cannot apply enough force to properly clean his teeth. He estimates that he needs 5-10 minutes per day. He also indicated that he needs assistance with dressing - he estimates 45 minutes per day. Finally, he indicated that his prosthetics break down about once a month and he then

needs assistance with toileting 3 times per day. He allows that he is independent as to bathing, eating, mobility and transfers.

This case is quite confusing. Apparently Petitioner has had personal care services in the past but it is not clear when, for how long, for how much time, for what tasks and what the funding source was. The provider requesting these personal care services told the Department reviewer that it was unaware Petitioner had the new electric bilateral prosthetics. Also Petitioner's appeal is also concerned with supportive home needs – cleaning, washing dishes and the like. These are not personal care worker services.

I am not approving any personal care services here. While Petitioner's testimony by itself supports the need for some help, the record is too confused as to what is needed to approve it without more information. As examples, Petitioner notes that he cannot get his electric prosthetics wet but the submitted records also note that he has a set of non electric prosthetics and it is not clear when Petitioner uses which. He testified that he can bath independently so has some capabilities in a wet environment. The provider does not seem to be aware of the prosthetics. The 45 minutes Petitioner estimates he needs for dressing is excessive for a person who has the capabilities that Petitioner has. As for toileting, again Petitioner indicates he needs help when his electric prosthetics break down which he indicates happens monthly and, again, it is not clear why the non electric prosthetics are not used at that time. Further, the electric prosthetics are noted to have cost \$37,000 and it is not clear why they break down so often. There is no record provided as to repairs and frequency of repairs to support Petitioner's testimony.

I am respectfully suggesting that Petitioner contact the provider if he wishes to have a prior authorization for personal care services refiled. If so, he needs to cooperate fully with the provider so as to properly develop the prior authorization request.

Finally, as for housekeeping type services Petitioner may want to contact:

Disability Resource Center (DRC) of Milwaukee County (link is external)

**Phone:** (414) 289-6660

**TTY/TDD/Relay:** 711

**Email:** InfoMilwDRC@milwcnty.com

**Office Location:**

1220 W. Vliet Street, Suite 300

Milwaukee, WI 53205

**NOTE: The provider will not receive a copy of this Decision. The provider must then submit a new prior authorization request to receive the approved coverage.**

#### **CONCLUSIONS OF LAW**

That the evidence offered on behalf of Petitioner is not sufficient to demonstrate that personal care worker services may be paid for by the Medicaid program.

**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 Milwaukee,  
Wisconsin, this 8th day of July, 2015

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\sDavid D. Fleming  
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 July 8, 2015.

Division of Health Care Access and Accountability