



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/164512

PRELIMINARY RECITALS

Pursuant to a petition filed March 06, 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 April 16, 2015, at Racine, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHCAA) correctly modified the Petitioner's request for Personal Care Worker (PCW) hours to 14 hours per week.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: OIG by letter

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Racine County.
2. Petitioner is 54 years old and does not live alone. (Exhibit 3, pg. 9)

3. As of November 11, 2014, Petitioner's "active problem list" included panic attacks, bi-polar disorder, depressive disorder, carpal tunnel syndrome and restless leg syndrome. (Exhibit 3, pg. 30 – Medicare Wellness Visit Note)
 4. Petitioner has also been noted to suffer from Lumbago (lower back pain), abnormality of gait and urinary incontinence. (Exhibit 3, pgs. 19 and 30)
 5. On October 7, 2014, Regal Home Health Services completed a Personal Care Screening Tool (PCST) and determined the Petitioner needed assistance with her activities of daily living as follows:
 - Bathing – Level D
 - Dressing Upper Body – Level D
 - Dressing Lower Body – Level D; including assistance with Ted Hose
 - Grooming – Level E
 - Eating – Level C
 - Mobility – Level D
 - Toileting – Level E; three times per day for incontinence care
 - Transferring – Level D
 - Medically Oriented Tasks – Medication reminder two times per day and ointment application two times per day.
- (Exhibit 3, pgs. 10-13)
6. On October 14, 2014, Regal Home Health Services, on behalf of the Petitioner, submitted a prior authorization request for 32.25 hours per week of PCW services for 53 weeks at a cost of \$307,665. It also requested 3.5 hours per week travel time for the PCW. (Exhibit 3, pg. 4)
 7. The proposed PCW schedule was for 2 hours in the morning and 2.5 hours in the evening. (Exhibit 3, pg. 18)
 8. On January 26, 2015, DHS sent the Petitioner and Regal Home Health Services a notice advising them that the request for services was modified to 13.25 hours per week for 53 weeks. DHS also indicated that it approved the 3.5 hours per week of travel time for the PCW. (Exhibit 3, pgs. 38-43)
 9. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on March 6, 2015. (Exhibit 1)
 10. On March 12, 2015, the DHS consultant letter indicated that DHS would approve 14 hours per week of PCW services. (Exhibit 2)

DISCUSSION

Personal Care Services are a covered service by Medicaid. They are defined 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. 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." *Wis. Admin. Code DHS §107.112(1)(a)*.

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under *Wis. Admin. Code DHS §107.11(2)*, that are needed to treat a recipient's medical condition or to maintain a recipient's health. *Wis. Admin. Code DHS §107.112(b)*

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

“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.”

Wis. Admin. Code §DHS107.02(3)(e)

“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. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

Regal Home Health Services, on behalf of Petitioner, requested 32.25 hours per week of active PCW service hours and 3.5 hours per week of travel time for the PCW. DHS approved the 3.5 hours per week of travel time for the PCW, but modified the request for active PCW service hours, reducing it from 32.25 hours to 14 hours per week.

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, Regal Home Health Services, completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located, under topic number 3165 on the Forward Health website:

<https://www.forwardhealth.wi.gov/WIPortal>

In general, seven activities of daily living (ADLs) are reviewed: 1) Bathing, 2) Dressing, 3) Grooming, 4) Eating, 5) Mobility, 6) Toileting, and 7) Transfers. In addition, Medically Oriented Tasks (MOTs), if any, are examined.

The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table, which is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165*. A copy of the table was included as attachment 9 of the OIG letter, Exhibit 2.

The letter from the Office of the Inspector General indicated that DHS allowed the following times for the following activities:

1. Bathing: 30 minutes per day x 7 days	210 minutes per week
2. Dressing: 20 minutes per day, 2x per day, x 7 days	140 minutes per week
3. Placement of Ted Hose: zero minutes	zero minutes per week
4. Grooming: 10 minutes per day x 7 days	70 minutes per week
5. Eating: zero minutes	zero minutes
6. Mobility: zero minutes	zero minutes
7. Toileting Incon. Care: 30 mins. per day x 7 days	210 minutes per week
8. Transfers: zero minutes	zero minutes
9. MOTs: zero minutes	zero minutes
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Total:	630 minutes week

Bathing

For bathing, DHS allowed the maximum amount of time permitted by the Personal Care Activity Time Allocation Table: 30 minutes per day x 7 days a week = 210 minutes per week. The Petitioner asserts that she needs more time for this task because of her sciatica and her lack of balance. While it is undisputed that the Petitioner needs assistance with bathing due to the aforementioned issues, there is nothing in the medical records to suggest the PCW needs more than 30 minutes per day to assist the Petitioner with bathing.

Dressing

Per page 4 of the PCST instructions, one episode of dressing is included in the 30 minutes allowed for bathing. The PCST instructions can be found in attachment 10 of Exhibit 2. They may also be viewed on-line at:

<http://www.dhs.wisconsin.gov/forms/F1/F11133a.pdf>

DHS allowed the maximum amount of time permitted for the second episode of dressing both upper and lower body: 20 minutes per day x 7 days a week = 140 minutes per week. The Petitioner agreed that the time allowed for this task was reasonable.

The dispute arose concerning DHS's decision to disallow time for the placement of TED Hose. As discussed above, PCW services, "shall be provided upon written orders of a physician..." *Wis. Admin. Code DHS §107.112(1)(a)*. The physician order, in the Home Health Certification and Plan of Care, does not contain any instructions for the placement of TED/anti-embolism hose. As such, time for that aspect of dressing cannot be approved.

Grooming

DHS allowed 70 minutes per week for grooming tasks. The Petitioner indicated in her testimony that the time allowed for this task was reasonable.

Eating

The Petitioner does not dispute the fact that she is able to feed herself. The Petitioner indicated that she does need help with setting up her meals. Time for this task is covered under incidental tasks. (See PCST instructions, attachment 10 of Exhibit 2) As such, it is found that DHS correctly denied PCW time for assistance with eating.

Mobility

The Petitioner testified that she is able to move about her home safely, with the use of a cane. The Petitioner further indicating that she is looking into using a walker to help her with ambulation and transfers. Accordingly, it is found that DHS correctly denied time for this task.

Toileting

DHS allowed 30 minutes per day, 210 minutes per week for incontinence care. The Petitioner indicated in her testimony that this was reasonable allocation of time for this task.

Transfers

The Petitioner testified that she is able to get up from a chair or out of bed safely, when she uses her cane. Accordingly, it is found that DHS correctly denied time for this task.

Medically Oriented Tasks

Under Medically Oriented Tasks (MOTs), the PCST indicated that the Petitioner needs assistance with medication reminders. Petitioner asserts that one of the side effects of her medications is forgetfulness.

According to page 1 of the PCST instructions, the prior authorization request is limited by what is ordered by a physician in the plan of care. This instruction is based upon *Wis. Admin. Code §DHS 107.112(1)(a)* which states that personal care services, "shall be provided upon written orders of a physician...according to a written plan of care". In addition, *Wis. Admin. Code §DHS 107.112(4)(c)* specifically lists "Personal care services not documented in the plan of care" as a non-covered service.

The physician's order, in the Home Health Certification and Plan of Care submitted by Regal Home Health Service, contains no explicit physician order for daily medication reminders. As such, time for this task cannot be approved.

I note that Petitioner's November 11, 2014 medical record indicated that, "there is no evidence of cognitive dysfunction by direct observation" and that any preexisting cognitive issues were "stable." Petitioner's October 1, 2014 medical record indicates that she was alert and oriented to person, place and time. Thus,

Petitioner’s medical records contradict the assertion that Petitioner suffers from forgetfulness and requires medication reminders.

Total Time Needed for ADLs and MOTs

Based upon the foregoing, the actual time needed to completed Petitioner’s ADLs and MOTs is as follows:

1. Bathing: 30 minutes per day x 7 days	210 minutes per week
2. Dressing: 20 minutes per day, 2x per day, x 7 days	140 minutes per week
3. Placement of Ted Hose: zero minutes	zero minutes per week
4. Grooming: 10 minutes per day x 7 days	70 minutes per week
5. Eating: zero minutes	zero minutes
6. Mobility: zero minutes	zero minutes
7. Toileting/Incontinence Care: 30 mins. per day x 7 days	210 minutes per week
8. Transfers: zero minutes	zero minutes
9. MOTs: zero minutes	zero minutes
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Total:	630 minutes week

Incidental Tasks

The PCST indicated that the Petitioner lived with a spouse or family member. Per the on-line Provider Handbook, topic 3167, for individuals who live with family members, 1/4 of the time it actually takes to complete Activities of Daily Living (ADLs) may be allocated for incidental cares such as changing and laundering linens, light cleaning in areas used during personal care activities, eye glass care and hearing aids, meal preparation, food purchasing and meal service.

One quarter of 630 minutes is 157.50 minutes.

Thus, the total time allowed for PCW services works out to be:

630 minutes per week for ALDs
+157.50 minutes per week for incidental activities

787.50 minutes per week
787.50 minutes ÷ 15 minutes per unit = 52.5 units per week rounded to 53 units per week
53 units per week = 13.25 hours per week of personal care services.

DHS ultimately approved 14 hours per week of PCW services, rounding up to the next hour.

Petitioner should be aware that if Regal Home Health Services can show a medical need for more time and can obtain the necessary physician orders, it can always submit a new prior authorization request for additional time, with the evidence to show the need for the additional time.

I note to the petitioner that her provider, Regal Home Health Services will not receive a copy of this Decision.

CONCLUSIONS OF LAW

DHS correctly modified Petitioner’s request for PCW services to 14 hours per week.

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 Milwaukee,
Wisconsin, this 30th day of April, 2015.

\sMayumi M. Ishii
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 April 30, 2015.

Division of Health Care Access and Accountability