



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/165362

PRELIMINARY RECITALS

Pursuant to a petition filed April 10, 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 05, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly modified the Petitioner’s March 12, 2015 request for personal care worker (PCW) service hours.

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 Milwaukee County.
2. Petitioner is 51 years old and lives alone. (Exhibit 2, Attachment 3, pg. 1)

3. Petitioner's diagnoses include lumbago, morbid obesity, osteoarthritis, degenerative disc disease, abnormality of gait, chronic pain and panic disorder with agoraphobia. (Exhibit 3, pg. 5 and pgs. 19-27)
4. On March 2, 2015, Quality Assurance Home Health completed a Personal Care Screening Tool that indicated the Petitioner needed assistance with the following tasks at the following levels:
 - Bathing – Level D
 - Dressing – Level D
 - Application of Compression Stockings / knee braces
 - Grooming – Level E
 - Eating – Independent
 - Mobility – Level D
 - Toileting – Level D with Incontinence Care 2x per day.
 - Transferring – Level D
 - Medication Reminders 2x per day

(Exhibit 2, Attachment 3)
5. On March 12, 2015, Quality Assurance Home Health submitted a prior authorization request for 38.5 hours of weekly PCW services, 7 hours per week travel time for the PCW, and nine supervisory nurse visits, to be used as needed. These services were requested at a cost of \$75,791.50. (Exhibit 3, pg. 4)
6. On March 27, 2015, DHS sent notices to the Petitioner and Quality Assurance Home Health, advising them that the request for weekly PCW services was modified from 38.5 hours per week to 28 hours per week. However, DHS approved the 7 hours of travel time for the PCW and the nine supervisory nurse visits. (Exhibit 3, pgs. 29-34)
7. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 10, 2015. (Exhibit 1)

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.

Quality Assurance Home Health, on behalf of Petitioner, requested 38.5 hours per week of Personal Care Worker (PCW) hours. DHS approved 28 hours per week of PCW services.

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, Quality Assurance Home Health, completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located on the Forward Health website: <https://www.forwardhealth.wi.gov/WIPortal>, under topic number 3165.

The information is then entered into a web-based PCST that 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 can be found in a link under Topic #4621 of the provider handbook; it is also included in Exhibit 2, attachment 8.

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), such as application of a brace, are also considered.

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. Brace /Compression Stocking assistance | zero minutes per week |
| 4. Grooming: 30 minutes per day x 7 days | 210 minutes per week |
| 5. Eating: zero minutes | zero minutes |
| 6. Mobility: 20 minutes per day x 7 days | 140 minutes per week |
| 7. Toileting: 20 minutes per day x 7 days | 140 minutes per week |
| 8. Incontinence Care: 30 minutes per day x 7 days a week | 210 minutes per week |
| 9. Transfers: 30 minutes per day x 7 days a week | 210 minutes per week |
| 10. MOTs: zero minutes | zero minutes |
| <hr/> | |
| Total: | 1260 minutes per 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 agreed that this was reasonable.

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 9 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. There is nothing in the record to suggest this period of time is unreasonable.

Assistance with Application of Brace / Compression Stockings

The PCST indicates that the Petitioner needs assistance with the application of compression stockings and knee braces. (See Exhibit 2, Attachment 3) DHS indicated that it did not allow time for this task, because there was no physician order for it. DHS is correct that the physician order in the Home Health Certification and Plan of Care does not include instruction for the application of compression stockings or knee braces; it only includes instructions for the application/removal of a back brace. (See Exhibit 3, pg. 5)

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.

Because application of compressions stockings and knee braces was not included in the physician order, time for this task may not be allowed. Further, even though the physician order provides instruction for the application of a back brace, the PCST did not indicate a need for such assistance. As such time cannot be allowed for application of a back brace, either.

Grooming

For Grooming, DHS allowed 30 minutes per day, the maximum amount of time allowed on the Personal Care Activity Time Allocation Table. The Petitioner agreed that this was reasonable.

Eating

The Petitioner agreed that she is able to feed herself independently. As such, DHS was correct in its decision to not allow time for this task.

Mobility

The PCST indicated that the Petitioner needs assistance at level D, in order to move about her home safely, meaning she requires hands on physical assistance to ambulate. DHS allowed the maximum amount of time allowed by the Personal Care Activity Time Allocation Table, 20 minutes per day, seven days a week.

The Petitioner testified that she moves so slowly that she needs additional time for the PCW to assist her with mobility.

The medical records submitted by Quality Assurance Home Health indicate that the Petitioner was being referred for physical therapy and occupational therapy due to weakness and multiple falls, even with the use of a walker. (Exhibit 3, pgs. 19-27) Petitioner’s medical records also indicate that the Petitioner’s walker is in disrepair. This certainly justifies the allocation of 20 minutes per day for assistance with mobility, at least for the current certification period.

The Petitioner testified that she also has a scooter, but doesn’t like to use it at home. The Petitioner gave no indication that she is unable to use the scooter in her home. As such, if it is too inconvenient to walk with assistance of the PCW, because it takes too long, the Petitioner needs to use her scooter to ambulate. Accordingly, no additional time will be allowed for assistance with Mobility.

I note that Page 2 of the PCST instructions state that no matter how long it takes an individual to perform a task with an assistive device, she should be considered independent with the task if she can perform it safely.

Toileting

The Petitioner agreed that the time allowed for toileting and incontinence care, which total 50 minutes per day, is reasonable.

Transfers

The Petitioner agreed that DHS's allocation of 30 minutes per day for transfers was reasonable.

Medically Oriented Tasks

Under Medically Oriented Tasks (MOTs), the PCST indicated that the Petitioner needs assistance with medication reminders. DHS denied time for this task, stating the Petitioner's medical records did not support it.

Petitioner's medical record for January 28, 2015, indicates that the Petitioner was alert; oriented to person, place and time; and that her memory was intact. (Exhibit 3, pg. 26) Her medical record for February 24, 2015, indicates that she did not show signs of decreased memory and that she was alert. (Exhibit 3, pg. 23)

Based upon the foregoing medical documentation, it is found that DHS correctly denied time for medication reminders.

Total Time Needed for ADLs and MOTs

Based upon the foregoing, it is found that DHS correctly determined that the actual time needed to completed Petitioner's ADLs and MOTs is 1260 minutes per week.

Medical Conditions

The PCST requested additional time to assist the Petitioner, asserting that she had a rare medical condition that made completion of her ADLs take longer to complete.

According to page 13 of the PCST instructions, in order for additional time to be approved for rare medical conditions, the patient must have a condition that is rarely diagnosed in the population. The medical condition claimed in the PCST is muscular disease. However, it seems unlikely that muscle disease would be an uncommon diagnosis among individuals who receive PCW services. As such, it does not qualify as a rare medication condition.

Further, there must be a need for the PCW to use one or more pieces of protective equipment prescribed for the member and the PCW must be required to adhere to member-specific precautions, as documented in the plan of care.

There is nothing in the plan of care indicating that the PCW needs to use protective equipment to assist the Petitioner, nor is there anything in the plan of care indicating that the PCW must adhere to member-specific precautions.

Finally, in order to have additional time approved for a rare medical condition, the PCST must explain how the medical condition increases the amount of time needed for the PCW to assist the patient with her activities of daily living. The PCST did not do that.

For all of the foregoing reasons, it is found that DHS correctly denied additional time for “Medical Conditions”.

Incidental Tasks

The PCST indicated that the Petitioner lives alone.

Per the on-line Provider Handbook, topic 3167, for individuals who live alone, time equal to 1/3 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 third of 1260 minutes is 420 minutes.

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

| |
|--|
| 1260 minutes per week for ALDs |
| +420 minutes per week for incidental activities |
| ----- |
| 1680 minutes per week |
| 1680 minutes ÷ 15 minutes per unit = 112 units / 28 hours per week |

DHS approved 28 hours per week of PCW services. As such, it correctly modified the March 2015 prior authorization request.

I note to the petitioner that her provider, Quality Assurance Home Health will not receive a copy of this Decision. Petitioner might wish to share this decision Quality Assurance Home Health.

There is nothing that precludes Quality Assurance Home Health from submitting a new or amended request for prior authorization that provides additional information / documentation justifying additional PCW time or correcting the discrepancy over time needed for application of her knee braces, compression stockings, and/or back brace.

CONCLUSIONS OF LAW

DHS correctly modified the Petitioner’s March 12, 2015 request for personal care worker (PCW) service hours.

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 29th day of May, 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 May 29, 2015.

Division of Health Care Access and Accountability