



FH

Redact

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

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In the Matter of:

Redact

DECISION

MPA/165756

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 27, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General ["OIG"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on May 19, 2015.

The issue for determination is whether OIG was correct to deny Prior Authorization ["PA"] # Redact which requested 24.25 hours per week of Personal Care Worker ["PCW"] time for petitioner.

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Redact

Respondent:

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

BY: Redact, RN, Nurse Consultant (Ms. Redact did not appear at the May 19, 2015 Hearing but submitted a letter, with attachments, dated May 7, 2015).

Office of the Inspector General  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [Redact]; 54 years old) is a resident of Milwaukee County, Wisconsin.
2. Petitioner lives alone in an apartment and does not regularly attend activities out of her home.
3. Petitioner states that she has diagnoses of arthritis (knees and legs), degenerative disc in back, and gout; she has pain in her ankle, foot, and lower back; she has angina pectoris, hyperlipidemia, essential hypertension, stomach ulcer, and anxiety disorders; she has a cane and a walker.
4. On March 20, 2015 petitioner's provider, [Redact], Wisconsin, filed PA # [Redact] dated March 20, 2015 with OIG requesting 116 units (29 hours) per week of PCW services for 53 weeks with a start dated of December 11, 2014 at a cost of \$24,714.96.
5. On April 10, 2015 petitioner's provider, [Redact], Wisconsin, filed a revised PA # [Redact] dated April 10, 2015 with OIG requesting 97 units (24.25 hours) per week of PCW services for 53 weeks with a start dated of December 11, 2014 at a cost of \$20,666.82.
5. OIG denied P.A. # [Redact]; OIG sent a letter to petitioner dated April 22, 2015 and entitled *BadgerCare Plus Notice of Appeal Rights* informing petitioner of the denial.
6. A *Personal Care Screening Tool* ["PCST"] completed on January 9, 2015 by a Registered Nurse ["RN"] states the following concerning petitioner's Activities of Daily Living ["ADLs"]: BATHING: baths self in shower or tub with constant supervision and physical intervention to ensure task completion; DRESSING: dresses herself with constant supervision and physical intervention to ensure task completion (at times someone helps her dress and undress; wears a brace on left leg and needs assistance with placement and removal); GROOMING: grooms self but needs physical assistance to set-up grooming supplies (needs help at night to wash her hands and face before going to bed); EATING: feeds self (but requires physical assistance at meal time with set up); MOBILITY IN HOME: moves about by herself with help of a cane or walker and with constant supervision and physical intervention to ensure task completion; TOILETING: toilets self but requires presence of another person throughout the task to ensure task completion and to provide physical intervention to promote safety; TRANSFERRING: transfers self with constant supervision and physical intervention to ensure task completion (sometimes needs assistance); MEDICATION ASSISTANCE: independent with medications; the PCST allocated 97 units (24.25 hours) per week of ADL assistance for petitioner.

**DISCUSSION**

By law, MA pays only for medically necessary and appropriate health care services when provided to currently eligible MA recipients. Wis. Admin. Code § DHS 107.01(1) (February 2014); See also, Wis. Stat. §§ 49.46(2) & 49.47(6) (2013-14). 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 or her place of residence in the community. Wis. Admin. Code § DHS 107.112(1)(a) (February 2014). Further, some medically oriented tasks may be covered as PCW services if the PCW has received special training in performing the task. Wis. Admin. Code §§ DHS 107.112(2)(b) & 107.11(2)(b)1. (February 2014). PCW services must be performed according to a written plan of care developed by an RN. The plan must be based on the RN's visit to the recipient's home and must be reviewed by the RN at least every 60 days via a home visit. Wis. Admin. Code §§ DHS 107.112(3)(b) & (c) (February 2014).

In addition to the medically oriented tasks allowed for PCW's that have received special training, the only PCW services covered are 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) & (4)(f) (February 2014).

As with any eligibility denial, the burden is on petitioner to show that she is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to do so.

It appears that petitioner is able to perform most ADLs on her own -- although she sometimes needs assistance with dressing, needs assistance with her leg brace, needs assistance to set-up grooming supplies and to wash her hands and face at night, needs assistance at meal time for set-up, and sometimes needs assistance with transferring. With many of her ADLs it is stated that petitioner needs constant supervision and physical intervention to ensure task completion and/or safety (there is a concern with falling). However, no exact "physical intervention" is specified for any of her ADLs. Further, paid PCW time is provided for supervision only if the PCW will physically intervene to ensure the member performs the activity safely. Watching a member execute a task by him/herself without physical intervention is not reimbursable [PCST *Completion Instructions*, page 2; Attachment #10 to May 7, 2015 OIG letter].<sup>1</sup>

It is apparent that petitioner needs some assistance sometimes with a few tasks -- but the evidence in the record of this matter does not support a level of assistance in the amount of 24.25 hours per week. Petitioner may, if she wishes, have her provider file another PA request along with additional documentation that supports the specific number of PCW hours that she is requesting.

### CONCLUSIONS OF LAW

For the reasons explained above, OIG was correct to deny PA # Redact which requested 24.25 hours per week of PCW time for petitioner.

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<sup>1</sup> It is also noted that providing PCW assistance cannot replace less expensive alternatives that can be used to maintain the member in his or her home. Assistance from a PCW with an activity is not medically necessary if the member can perform the activity safely with the use of an assistive device. PCST *Completion Instructions*, page 2; Attachment #10 to May 7, 2015 OIG letter.

**NOW, 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 17th day of June, 2015

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\sSean P. Maloney  
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 June 17, 2015.

Division of Health Care Access and Accountability