



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/165962

PRELIMINARY RECITALS

Pursuant to a petition filed May 07, 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 26, 2015, at West Bend, Wisconsin.

The issue for determination is whether the Department correctly modified the petitioner's request for Personal Care Worker (PCW) hours.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By Letter: Lori J. Schultz, 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:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Washington County.

2. On January 29, 2015 the petitioner's provider completed a Personal Care Screening Tool (PCST). The PCST indicated that the petitioner needed 29 hours per week of Personal Care Worker (PCW) services.
3. On February 12, 2015 the petitioner's provider submitted a request for prior authorization of PCW hours. Specifically, the petitioner's provided requested 33.25 hours per week of PCW services for 53 weeks. This was at a cost of \$34,363.88.
4. On April 6, 2015 the respondent notified the petitioner in writing that it approved 21.25 hours per week of PCW hours.
5. On May 11, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing. In her request, she stated that she is on a gluten free diet, and she does not eat with her mother. She further stated that she has a general soap allergy, and her clothes need to be washed in DREFT, and thus cannot be combined with her mother's laundry.
6. The petitioner is a 10 year old with an Autistic disorder. The PCST states that she functions at a 24-36 month level with a history of aggressive outbursts, such as hitting, pinching, screaming, and complete shutdown, toward self and others. The petitioner lives with her mother. The petitioner's mother has her own PCW, independent from the petitioner's PCW.
7. The Department originally modified the request for PCW hours because another household member also had PCW services. The provider handbook states "when personal care services are provided to more than one member at a single location, providers are required to consolidate care for tasks such as cleaning, laundry, travel time, and meal preparation." Based upon the petitioner's statements in her request for fair hearing, the Department allowed an additional four hours per week of PCW time. Thus, the PCW approved time was increased from 21.25 hours per week to 25.5 hours per week. The petitioner does not believe that this is a sufficient amount of time to meet her needs.

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)

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

The petitioner’s provider, on behalf of petitioner, requested 33.25 hours per week of Personal Care Worker (PCW) hours. According to the letter from the respondent, DHS approved 25.5 hours per week of services. At the hearing petitioner requested 33.25 hours of PCW time.

In determining how many hours of personal care services an individual is allowed, a service provider 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 responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table.

The Personal Care Activity Time Allocation Table is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165*; this chart can also be found at the aforementioned website.

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 glucometer readings or medication assistance, are also examined.

In this case the PCST indicated that the petitioner needed 29 hours per week of PCW assistance. This tool took into account the fact that the petitioner exhibits behaviors more often than once per week that interferes with the PCW's assistance with ADLs. The petitioner is a 10 year old with Autistic disorder. She functions at a 24-36 month level with a history of aggressive outbursts, such as hitting, pinching, screaming, and complete shutdown, toward self and others.

The 25.5 hours of PCW services allowed in this case account for all of the petitioner's special issues. In considering the amount of time necessary, I reviewed the PCST and the maximum allowable time generally allowed for each task. I looked at each ADL, and the level of assistance required. The nurse completing the PCST notes the level of assistance required via letter A-E. I then compared these letters to the forward health Personal Care Activity Time Allocation Table. If the petitioner did not have special circumstances, the maximum allowable time for assistance with ADLs would be 130 minutes per day. This amounts to 15.25 hours per week of PCW time. This is more than 10 beyond the generally allowable time. This accounts for the additional time that the petitioner requires, and the petitioner's activities incidental to daily living.

It is the petitioner's burden to establish the necessity of the requested time. At the time of hearing, the petitioner did not offer testimony of the caregiver's to explain why the Department's calculation of need under the PCST was flawed. The petitioner did not articulate what quantity of additional time is needed for each task. The petitioner could provide this information for some tasks, but not all tasks. I note that for the tasks where the petitioner was able to specify an amount time, more than the amount time specified was allowed. The petitioner was able to articulate specific behaviors that justify more time, however, the Department considered this, and more time was already allowed. The Department's analysis of the petitioner's needs is the most thorough and credible determination in the record.

I further note that the nurse consultant took the petitioner's concerns, as outlined in her request for fair hearing, into account, and allowed additional time beyond the original approval. Specifically the petitioner stated that she is on a gluten free diet, and cannot have any cross contamination. She stated that her clothes must be washed separately because she has a sensitivity to traditional laundry soap. Her mother cannot afford the expensive laundry soap for her clothes, necessitating a need for additional PCW hours. I find much of this testimony self-serving and not credible. There is a generic version of DREFT that would not be cost prohibitive. In addition, a PCW can prepare two separate meals for mother and daughter at the same time. This will take slightly more time than preparing one single meal for both parties, but the Department took this information into account when allowing an additional 4 hours per week of PCW services. Regardless, even if all of the testimony offered on the petitioner's behalf is true, 25.5 hours per week is enough PCW time to account for all of her needs. I cannot find any way to justify additional PCW services beyond the 25.5 hours per week already approved.

The petitioner should be aware that if the provider can show a medical need for more time, it can always request a new prior authorization for additional time with evidence to show the need for the additional time. However, based upon the evidence before me I cannot conclude that the respondent's reduction was wrong.

CONCLUSIONS OF LAW

The Department correctly modified the petitioner's request for Personal Care Worker (PCW) 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 17th day of June, 2015

\sCorinne Balter
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