



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

REHEARING DECISION

MPA/166251

PRELIMINARY RECITALS

Pursuant to a petition filed May 15, 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 July 01, 2015, at Milwaukee, Wisconsin.

The Division of Hearings and Appeals received your Rehearing Request on September 2, 2015. Attached to the petitioner's rehearing request were additional documents. I granted the petitioner's Rehearing Request and forwarded the documents the Department to review and provide a response. The Department provided a response. After receiving their response the petitioner provided a reply.

My review of this additional information is that this rehearing probably should never have been granted. In the petitioner's Rehearing Request she is attempting to re-litigate issues already litigated and presented during her appeal. Specifically, the issues of whether her disease, Arnold-Chiari Malformation, is a Rare Medical Condition as defined by the Personal Care Screening Tool, and the amount of Personal Care Worker time approved. I addressed these issues in my original decision. I see no need to change my original decision in this case as I considered and rejected the same information that the petitioner continues to provide. However, I granted the rehearing request, considered the information presented, and reach the same conclusion as discussed below.

The issue for determination is whether the respondent 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]

Respondent:

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

By Letter: Sharon Beck

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 Milwaukee County.
2. On January 20, 2015 the petitioner's provider completed two Personal Care Screening Tools (PCSTs). One of the PCSTs indicated that the petitioner required 53.5 hours of Personal Care Worker (PCW) assistance. The other PCST indicated that the petitioner required 36 hours per week of PCW assistance.
3. On January 23, 2015 the petitioner's provider submitted a request for prior authorization of PCW hours based upon one of the aforementioned PCSTs. Specifically, the petitioner's provider requested 53.5 hours per week for 53 weeks. This was at a cost of \$45,594.84.
4. On April 10, 2015 the petitioner's provider submitted another request for prior authorization of PCW hours based upon one of the aforementioned PCSTs. Specifically, the petitioner's provider requested 36 hours per week for 53 weeks. This was at a cost of \$30,680.64.
5. On April 28, 2015 the respondent notified petitioner in writing that they approved 23.25 hours per week of PCW hours.
6. The petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 15, 2015.
7. The petitioner lives with her husband.
8. The petitioner is 61 years old with diagnoses of osteoarthritis and Arnold-Chiari deformation (also known as Arnold Chiari malformation). Arnold-Chiari malformation is a condition which affects the brain via anatomical or structural defects to the cerebellum. The condition is often congenital but may occur after head injury. There are a wide range of symptoms and severity varies greatly from person to person. Some patients may have no symptoms while other experience headaches and dizziness.

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 the petitioner, originally requested 53.5 hours per week of Personal Care Worker (PCW) hours. The provider later modified that request to 36 hours per week of PCW time. According to the letter from the respondent, DHS approved 23.25 hours per week of services. At the hearing petitioner requested 53 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.

The petitioner is 61 years old with diagnoses of osteoarthritis and Arnold-Chiari deformation (also known as Arnold Chiari malformation). Arnold-Chiari malformation is a condition which affects the brain via anatomical or structural defects to the cerebellum. The condition is often congenital but may occur after head injury. There are a wide range of symptoms and severity varies greatly from person to person. Some patients may have no symptoms while other experience headaches and dizziness. The petitioner also has hypertension, GERK, urinary incontinence, and headaches. She attends a pain management clinic who prescribes her narcotics.

It is petitioner's burden to establish the necessity of the requested time. The Department approved 23.25 hours per week of PCW time. There were two PCSTs completed. One PCST requested 53.5 hours per week of PCW time. The other PCST requested 36 hours per week of PCST. In this case, I must rely on the PCST requesting the least amount of time. Although it appears that the dates both the PCSTs were completed are the same, given that there were two requests for PCW hours, and the second request was based on the PCST recommending the least amount of hours, I believe that the PCST with the least amount of hours is a more recent PCST. Regardless, if two PCSTs are completed on the same date, the PCST with the least amount of hours will control unless it is otherwise explained or noted why the petitioner's need for PCW hours increased on the very same date.

The Department reviewed the PCST that recommended 36 hours per week of PCW time. In their review the Department did not allow time for eating assistance. The PCST indicated that the petitioner needed assistance with meal preparation, cutting, and serving food. The instructions for completion of the PCST direct the screener "not to select eating if only assistance with meal preparation is needed. Time for meal preparation is included with time for services incidental to ADL [activities of daily living]." At the hearing the petitioner testified that she has tremors and that she is unable to carry a tray, pour her own drink, or cut up food. The Department is correct. These tasks are in the category of meal preparation, not eating, and thus time should not be allowed in the eating category.

In their review the Department reduced the number of times per day for toileting/incontinence care from four times per day to two times per day. This is appropriate given that the proposed schedule has her

PCW coming to her home two times per day. In addition, the petitioner testified that she uses Depends. She does not have a catheter, and is not completely incontinent. Given the use of Depends, the petitioner's diagnosis, and stated needs, and the fact that her PCW worker comes to her home two times per day, it is appropriate to allow two times per day for toileting/incontinence care.

The Department did not allow any time for medication assistance. On the PCST the agency stated that it does not manage medications. Rather medication management is between the petitioner and her physician. This is not allowed as a PCW task. I note that although the petitioner cannot open pill bottles, a weekly pill container could be set up by a non-paid family member. This would require a minimal amount of time. I further note that the petitioner lives with her husband.

The Department argues that the petitioner's condition is not a rare medical condition. The term rare medical condition is somewhat misleading on the PCST. The issue with this category is whether or not the petitioner presents with a rare medical condition **"that present unique challenges for caregivers and makes assistance with ADL [activities of daily living] tasks more time consuming for the PCW to perform."** I believe that the petitioner's condition is rare in the general sense of the word. However, the petitioner's condition does not meet the criteria for a rare condition on the PCST. This condition varies in severity. The petitioner did not offer any testimony that it takes longer for a PCW to complete tasks with her compared to another person with a different type of medical condition. Rather, the petitioner described how tasks are difficult for her, and how she has incontinence. In addition, the petitioner presented as a cooperative person. I believe that she would gladly assist her PCW in the tasks to the best of her ability. For these reasons, I don't believe that her diagnosis requires additional time beyond the generally allowable times for each of the tasks.

The petitioner did not articulate what quantity of additional time is needed for each task or what specific behaviors justify more time. Nothing was quantified. The Department's analysis of petitioner's needs is the most thorough and credible determination in the record. The petitioner must offer some specificity and evidence to support the requested time. Without a better way to quantify the time for services, I have no basis upon which to find in favor of the petitioner's request for PCW hours. I note that I reject the petitioner's argument that she needs an additional frequency for dressing due to incontinence. The petitioner uses depends, and time has been allotted in the area of toileting/incontinence care.

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.

I note that the petitioner has become less credible during this Rehearing process. She has one goal in mind, and that is to get more Personal Care Worker hours for her daughter, who is her Personal Care Worker. She is utterly unwilling to work with the Department. For example, the petitioner called me to tell me that the Department was not processing another prior authorization request for Personal Care Worker hours. I referred her to the Department. The Department in their response state that they spoke to the petitioner, and told her that this current prior authorization request ended on July 27, 2015. Thus, her Personal Care Worker is getting paid for 0 hours after July 27, 2015. The Department informed the petitioner of this, and told her that her provider should submit another prior authorization request. Nonetheless, the petitioner was adamant that she did not want another prior authorization request submitted until after my decision.

The petitioner in her reply states she told the nurse consultant that she did not want to wait another 19 days for her response. At that point the Department offered to extend her prior authorization of 23 hours per week of PCW time for another six months. The petitioner's version of this conversation is not credible. The Department would have no reason to lie. The Department cannot do anything without

another prior authorization request. There is a process, which is dictated in the administrative code. The Department cannot simply skip the code requirements as the petitioner states that they offered to do.

Further, I note that Medicaid is meant to provide the most basic and necessary health care services at a reasonable cost to a large number of persons. The Department must authorize services according to the Wisconsin Administrative Code definition of medical necessity and other review criteria noted above. I understand that the petitioner feels that she has a rare condition, and thus requires additional time. Perhaps additional time would be preferred, however, only the most basic and necessary health care services are covered.

This decision is moot as this prior authorization request ended at the end of July. If the petitioner would like PCW hours to be covered, the petitioner's provider should submit another prior authorization request for PCW hours.

CONCLUSIONS OF LAW

DHS correctly modified the PCW hours requested.

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 8th day of September, 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 September 8, 2015.

Division of Health Care Access and Accountability