



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

In the Matter of

[REDACTED]

DECISION

[REDACTED]

**PRELIMINARY RECITALS**

Pursuant to a petition filed June 9, 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 June 25, 2015, at Milwaukee, Wisconsin. At the request of the petitioner, the record was held open for 20 days for the submission of additional information.

The issue for determination is whether the Division of Health Care Access & Accountability correctly modified the petitioner’s PA Request for coverage of personal care work hours from 32.5 to 17.5 hours per week, due to the reduced level being the most appropriate level of services supported by clinical documentation.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

Written Appearance By: [REDACTED], R.N., B.S.N., Nurse Consultant  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Kenneth D. Duren, Assistant Administrator  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a 42 year-old male resident of Milwaukee County. He lives with his wife, [REDACTED]
2. The petitioner has the following conditions: Chronic Pain Syndrome; herniated intervertebral disc lumbar. He had a decompressive laminectomy at L3-L5, (2012) postero-lateral arthrodesis, and

- spinal fusion (2013). He has degenerative disc disease; arthritis; tension headaches; dizziness; cervicgia; radiculopathy; sciatica; numbness in lower extremities; decreased generalized range of motion; and increased generalized pain. He has a slow and unsteady gait, and uses a cane or walker for safety during ambulation or mobility. He is not able to stand for very long, due to weakness, numbness and shooting pain. He has back spasms. He has difficulty reaching over his head or bending forward due to back pain and range of motion limits in his spine. He is forgetful.
3. The petitioner requires assistance with bathing, dressing, grooming, toileting, ambulating, transferring, meal preparation/set up and light housekeeping.
  4. On April 2, 2015, [REDACTED] LLC, the petitioner 's personal care worker services provider, had a Personal Care Screening Tool ("PCST") performed by nurse screener [REDACTED], and the online tool assessment found that the petitioner required 32.5 hours per week of PCW services. See, Exhibit #2, attached PCST.
  5. On April 22, 2015, the service provider filed a Prior Authorization Request with the Department's Division of Health Care Access and Accountability requesting 6986 units of PCW services over 53 weeks, plus 96 units as needed, or 32.5 hours per week of PCW services. The requested services were bill to MA at the total cost of \$43,662.50.
  6. The Department's Nurse Consultant reviewed the Prior Authorization Request and supporting clinical documentation and concluded that his PCW weekly needs are: 210 minutes of assistance bathing; 0 minutes for assistance with upper or lower body dressing; 210 minutes of assistance per week for grooming; 0 minutes for assistance with eating; 0 minutes for assistance with mobility; 140 minutes of assistance per week for toileting/incontinence care; 210 minutes per week of assistance with transfers; 0 minutes per week for medically oriented tasks; 210 minutes per week for services incidental to tasks; 0 minutes for any other considerations. This totaled 840 minutes per week for Activities of Daily Living and Medically Oriented Tasks, plus 210 minutes per week for services incidental to tasks, for a total approved amount of 1050 minutes per week, or 17.5 hours of personal care worker services per week, plus 24 hours as needed per year. The total cost of the regimen of care would be approximately \$26,375, as modified.
  7. On June 5, 2015, the Division of Health Care Access and Accountability issued a Letter Notice to the petitioner informing him that the DHCAA had modified his request and approved only 17.5 hours per week of PCW services, plus 24 hours as needed, for a one year period.
  8. The petitioner does not require any measurable amount of assistance to ambulate with his cane or walker. The petitioner does not require the provision of any Medically Oriented Tasks. The petitioner did not assert any specific amounts of time or tasks under the "other considerations" section.
  9. The petitioner agreed that he needs 30 minutes per day for assistance with bathing and 30 minutes per day with grooming. He agrees that he can feed himself.
  10. The petitioner testified that he requires 10-15 minutes per day of assistance with dressing, asserting that he need help donning a shirt toileting and he needed mostly upper body assistance, but also that he needs help donning shoes and socks, and tying his shoes due to bending limitations. He testified that he needs 15-30 minutes of meal preparation and setup per meal. He testified that he requires 140 minutes of assistance per day for toileting because he toilets 5-6 times per day as he has lots of constipation and frequent urination. The petitioner testified that he needs 45-50 minutes per day of assistance with transfers, and 45-60 minutes per day for assistance with incidentals. He also testified that he needs standby assistance every time he ambulates all day per long, and that this is 3 minutes per time he ambulates, without any assertion of how much assistance this totals per day.
  11. The petitioner asserted that he was receiving 42.5 hours of PCW services per week last year, and that is the amount he really would like.

- [REDACTED]
12. The record was held open for a medical report that the petitioner testified would support his contention that his condition is worsening and he requires more PCW services that he was awarded by the DHCAA.
  13. The findings of his CT lumbar spine printed on July 9, 2015, indicate that he has “stable hardware fusion at L3-L5 with stable lucency surrounding the bilateral L3 pedicle screws, which could represent mild hardware loosening but which is also unchanged in the last year; and stable multilevel degenerative disease resulting in mild foraminal narrowing at several levels. See, Exhibit #4.

### DISCUSSION

Personal care services are “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). Covered services include 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(b).

Personal care workers can spend no more than one-third of their time performing housekeeping activities for a person living alone, and one-fourth of their time for a person living with other family members. Like all medical assistance services, PCW services must be medically necessary and cost effective. Wis. Admin. Code, §DHS 107.02(3)(e)1 and 3.

As drafted by the provider’s nurse assessor, the Personal Care Screening Tool showed a need for 32.5 hours per week in PCW service. The screening tool allocates a specific amount of time in each area the recipient requires help, and is filled out by a nurse assessor from the home health agency. The PCST is a Department-mandated computer program it believes allows an assessor to consistently determine the number of hours required by each recipient, but the Department reserves the right to make adjustments when its professional consultant reviews the clinical documentation as a whole.

The petitioner testified that he needs more than the 140 minutes a week for assistance toileting as he may go to the bathroom 5-6 times per day some days, asserting he needs 60 minutes a day or 420 minutes per week for this task, without real explanation of why other than asserting that he has a lot of constipation and frequent urination. He assert he needs assistance with transfers in excess of the 210 minutes per week allotted, asserting he needs 45-50 minutes per day, i.e., 315 - 350 minutes per week, again without much elaboration why it takes so long or how an assist would help. He asserts that he always needs standby assistance any time he ambulates, even with cane or walker, but could not estimate how much time should be allocated per day watching him safely ambulate. He asserts that he needs help with dressing because he cannot reach above his head due to his fused back and back pain. For this same reason, he reports that he needs assistance with lower extremity dressing including putting pants on, socks and shoes, and tying of

shoes. [REDACTED] reports that he agrees that 210 minutes per week is sufficient for grooming and bathing once per day, and that he can apparently brush his teeth, hair and clean his face with some assistance. He reports that he requires meal preparation and setup, but he does not need his food cut; and admits that he can use utensils and feed himself independently. Finally, he asserts that he requires more than the allotted 30 minutes per day for incidental services, apparently like errands, grocery shopping, changing the bed linens, laundry, mopping, house cleaning, and vacuuming, i.e., more like 315-420 minutes, or nearly 7 hours per week, for incidentals.

On its review, the DHCAA also used the Personal Care Screening Tool as a guide. The DHCAA's reviewer can then adjust to account for variables missing from the screening tool's calculations. Here, the DHCAA reduced the amount to 17.5 hours per week after reviewing petitioner's medical records, the Personal Care Screening Tool, and the Maximum Allotment Table.

The DHCAA allocated as described in detail in Finding of Fact #6. Of note, 0 minutes was allocated for dressing, noting that dressing is considered a component of bathing. It also gave an additional 0 minutes per day for lower extremity dressing. These computations total 840 minutes of cares. The Consultant then applied the 1/4 limitation on incidental cares for a person living with another, and 210 minutes per week were allotted for incidentals. Thus, the total allocation was for 1050 minutes per week or 150 minutes per day.

PCW services are to primarily address the listed covered *personal cares* services contained in Wis. Admin. Code §DHS 107.112(1)(a), plus *incidental* services (i.e., laundry, cooking, cleaning, etc.) up to 1/4 of the total allotted for the covered services list when the recipient lives with another adult, like his wife here.

I have reviewed the evidence in this record carefully, and I must concur with the DHCAA decision. The additional clinical evidence for which the record was held open was not persuasive at all that assistance is required at double the rate, or more, than the DHCAA awarded. Nor were the testimonies of the petitioner and his wife. Frankly, his mere assertion of dozens of minutes per day for ambulation, transfers, and toileting are simply not credible or supported by any clinical evidence. If the petitioner was receiving 42.5 hours of PCW services per week in the past, then his conditions were worse or he was receiving too much PCW assistance. In any event, the clinical evidence, the screening tool, and Exhibit #4 which he just submitted, demonstrate a relatively stable man who requires about 17.5 hours per week of PCW services, and not the requested 32.5 hours per week. See Exhibit #1, Attachment #1, the Personal Care Activity Time Allocation Table; and see, Exhibit #2, Plan of Care. To be clear, the petitioner does require assistance with many of these tasks, if not all of them. But his expectation of the amount of time allocated for each is grossly excessive and not supported by the clinical documents as to the massive amounts of time he seeks to have approved for these tasks. The assertions in quantity of time requested are not supported by the clinical evidence. The mere anecdotal testimony of the petitioner and his wife do not provide credible evidence of what is required. Rather, it is merely evidence of what their preferred regimen would be. I find the preponderance of the credible medical evidence in this record supports the Department's determination of what amount of services are medically necessary, not the petitioner's views.

I also observe that if it becomes apparent that the necessary and prescribed cares cannot be accomplished in the time allotted, or if petitioner has a change that negatively affects his health, a new request or amendment can be filed at any time detailing why more time is needed.

#### **CONCLUSIONS OF LAW**

The DHCAA was correct in modifying the prior authorization requested PCW services from 32.5 hours per week to 17.5 hours per week, plus 24 hours as needed over the year, for 53 weeks, based upon

petitioner's medical records, physician's orders, and the 1/4 limitation for incidental tasks for a person not living alone.

**THEREFORE, it is**

**ORDERED**

That the petition for review hereby be, and herein 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 Madison,  
Wisconsin, this 17th day of July, 2015

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\sKenneth D. Duren, Assistant Administrator  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 17, 2015.

Division of Health Care Access and Accountability