



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MPA/166845

PRELIMINARY RECITALS

Pursuant to a petition filed June 22, 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 September 09, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly modified the Petitioner's PA request for personal care worker (PCW) services.

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: Cindy Zander

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. She is 28 years old and lives with family.

2. Petitioner's diagnoses include cerebral palsy, cognitive delays and obesity. Functional limitations include endurance. She uses a walker. She is able to communicate her needs verbally.
3. On March 20, 2015 a Personal Care Screening Tool was completed by Affiliated Home Health Care. The assessor determined the Petitioner has the following needs:
 - Bathing – Level D
 - Dressing – Level D
 - Brace application: Yes. Petitioner has prosthetic leg braces for both legs.
 - Grooming – Level E
 - Eating – Level B. Petitioner requires assistance with all meal prep. She cannot stand for any periods to cook.
 - Mobility – Level B. Petitioner is ambulatory with walker. She has a history of increased frequency of falls.
 - Toileting – Level D. Petitioner needs assistance/reminders to use toilet and maintain urinary continence program. 7x/day.
 - Transferring – Level B
 - Medication Assistance – Level B. 2x/day.
4. The Plan of Care submitted with the PA request reports that the Petitioner requires PCW assistance for all ADLs due to congenital cerebral palsy and cognitive delays. She lacks fine motor skills due to the CP. It noted that she is alert and oriented, that her affect and manner is quiet and calm. She denies pain. She has untreated hypertension. It notes she has minor forgetfulness with medications. She is reported to be morbidly obese. She requires assistance with putting on and taking off prosthetic leg braces. Additional documentation submitted by the provider reports that the Petitioner does not have the mental ability to recognize the need to bathe, groom, comb hair or clean after toileting. It indicates she has unpredictable joint pain.
5. On April 27, 2015, a PA request was submitted on behalf of the Petitioner, requesting PCW services in the amount of 26.25 hours/week starting May 5, 2015.
6. On June 8, 2015, the agency issued a notice to the Petitioner that it approved 17.5 hours/week of PCW services. The agency approved time as follows:
 - Bathing – 210 minutes/week
 - Dressing – 140 minutes/week
 - Brace application – 0 minutes
 - Grooming – 210 minutes/week
 - Eating – 0 minutes
 - Mobility – 0 minutes
 - Toileting – 280 minutes/week
 - Transfers – 0 minutes
 - Medication assistance – 0 minutes
 - Services incidental to tasks – 210 minutes/week
7. On June 22, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

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).

The agency approved the maximum amount of time generally allowed for bathing, dressing and grooming. The agency indicated that it did not allow time for brace application because the Plan of Care implies that the braces are not worn regularly and there is no physician’s order for them included with the PA. It did not allow time for eating because the only assistance that the Petitioner requires, according to the PCST, is assistance with meal preparation. With regard to mobility and transfers, the agency notes that the Petitioner is able to ambulate and transfer with her walker or cane. For toileting, the agency allowed time for assistance 4x/day for reminders and to maintain her urinary continence program. With regard to medication assistance, the agency did not allow any time based on information that the Petitioner does not require PCW assistance other than reminders.

At the hearing, the Petitioner’s caregiver and guardian testified on her behalf. Regarding brace application, the guardian testified that the Petitioner wears AFO splints every night and has had them for years. She also wears a knee brace PRN. She testified that the AFO splints were approved and purchased by the MA program. The caregiver testified that the Petitioner is able to feed herself and is able to ambulate in the home independently. The PCW generally needs to get the Petitioner’s cane for her in order for her to ambulate. Regarding toileting the caregiver testified that the Petitioner requires assistance in the morning, at night and two times during the day. Regarding transfer, the caregiver testified that the Petitioner requires PCW assistance to get in and out of a bed.

I conclude that, with regard to brace application, the evidence indicates that the Petitioner wears braces every night and that she requires assistance with brace applications. However, the Petitioner does need to submit a doctor’s order to the agency so that time can be allowed for the brace applications. For eating, the evidence demonstrates that the Petitioner is able to feed herself. Time may not be allowed for meal preparation though, as the agency notes in its summary, there are other programs that may be available to the Petitioner to provide supportive home care, including meal preparation. Similarly, with regard to mobility, the evidence demonstrates that the Petitioner is able to ambulate independently with her cane and/or walker. Time is not allowed for stand-by assistance. With regard to toileting, the agency properly

allowed time for 4 episodes/day. For medication assistance, time is not allowed for reminders only. Petitioner does not require any additional assistance taking her medications.

With regard to transfer assistance, the evidence is inconsistent. The PCST indicates that the Petitioner is able to transfer herself but requires intermittent supervision or cueing. At the hearing, the Petitioner's caregiver testified that the Petitioner requires assistance in and out of bed, primarily because she requires AFOs to be applied and taken off. She testified that the Petitioner is able to get out of a chair with stand-by assistance. Time is not allowed for stand-by assistance. With regard to getting in/out of bed, if the Petitioner submits a physician's order for the brace application, this should be sufficient for the assistance the Petitioner needs.

Based on the totality of the evidence, I conclude the agency properly determined the Petitioner is eligible for 17.5 hours/week of PCW services.

CONCLUSIONS OF LAW

The agency properly determined the Petitioner is eligible for 17.5 hours/week of PCW services.

THEREFORE, it is **ORDERED**

That the Petitioner's appeal 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 11th day of November, 2015

\sDebra Bursinger
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 November 11, 2015.

Division of Health Care Access and Accountability