



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed July 13, 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 August 17, 2015, at New Richmond, Wisconsin.

The issue for determination is whether the department correctly determined the number of personal care worker hours the petitioner is entitled to.

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: [REDACTED] R.N.

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

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of St. Croix County.

2. On May 15, 2015, the petitioner with Interim Healthcare of Western Wisconsin requested 57 hours of personal care worker services per week for 53 weeks. The petitioner also requested reimbursement for seven hours per week. On June 30, 2015, the Office of Inspector General approved 46.75 hours of care per week. It did not approve any reimbursement for travel time.
3. The Office of Inspector General approved care as follows:
- a. Bathing: 210 minutes week
 - b. Dressing (upper and lower body): 280 minutes per week
 - c. AFO placement and removal: 0 minutes per week
 - d. Grooming: 210 minutes per week
 - e. Eating Assistance: 320 minutes per week.
 - f. Mobility: 140 minutes per week.
 - g. Toileting and Incontinence Cares: 630 minutes per week.
 - h. Transfers: 315 minutes per week.
 - i. Range of Motion: 140 minutes per week.
 - j. Medical Conditions: 0 minutes per week.
 - k. Services Incidental to tasks: 561 minutes per week. (Equals one-fourth of the time allocated for activities of daily living and medically oriented tasks.)
4. The petitioner has been receiving reimbursement for 57 hours of care per week until his current request was acted upon. His physical condition and needs have not changed recently.
5. The petitioner lives with his parents. They provide all of his care.
6. The petitioner diagnosed with congenital quadriplegia, has convulsions, and has had surgery. He is completely dependent upon others for all of his cares and mobility.
7. Nothing in the petitioner's medical record indicates that he wears AFOs.

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. Adm. 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 list of covered services does not include supervision or teaching. Personal care workers can spend no more than one-third of their time performing housekeeping activities; but if the recipient lives with family members who provide the care, housekeeping activities are limited to one-quarter of time allotted for

other activities. *BadgerCare Plus & Medicaid Online Handbook*, Topic 3167, p2. Like all medical assistance services, personal care worker services must be medically necessary and cost effective. Wis. Admin. Code § DHS 107.02(3)(e)1 and 3.

The petitioner is a 27-year-old man diagnosed with congenital quadriplegia, has convulsions, and has had surgery. He depends completely upon others for all of his cares and mobility. He receives his personal care through Interim Healthcare of Western Wisconsin, but his parents are the ones who actually provide that care. He and Interim requested 57 hours of care per week, which is what he received in previous years, plus another seven for travel. The Office of Inspector General approved 46.75 hours of care a week and no additional time for travel. Because the petitioner lives with his parents and they provide his care, it is unclear why Interim requested reimbursement for travel. The petitioner's parents indicated that they have never billed for travel.

They do question why their son's services were reduced from past years despite his condition and needs remaining the same. Although the Office of Inspector General did not explain this, it did explain why it approved each time for each task it did. The amount of time allotted for each task is generally determined by the Personal Care Screening Tool, a computer program that allots what is considered the amount of time needed to complete each task. It did not allow any time for putting AFOs on the petitioner because nothing in his medical file indicates that he wears them.

Nor did it allow any time for "medical conditions." Extra time is allowed for this category of services only if the condition is a rare one that presents a unique challenge to the worker. *Personal Care Screening Tool Instructions*, p.13. The request indicates that the petitioner's medical condition leads to more time for dressing because of his spastic motions and because he spills food and beverages on himself. But the Office of Inspector General has already allowed more time for dressing during bathing. It suggests that he wear clothing protectors during meals. And it points out that to obtain more time for a medical condition the worker must establish that (1) he or she requires one or more pieces of protective equipment such as a helmet or back brace to care for the recipient or (2) he or she must adhere to member-specific precautions when assisting an activity of daily living. *Id.* The petitioner did not establish either of these criteria.

The petitioner has the burden of proving that the care he requests is necessary. That said, it does raise questions when the level of care one is allowed is reduced despite the law, his condition, and his needs remaining the same. The problem overcoming this question is that neither Interim's request nor the testimony on behalf of the petitioner presented any specific evidence justifying more care than the Office of Inspector General has allowed. Indeed, Interim's request is rather sloppy, as is demonstrated by the request for travel time. I understand why the petitioner's parents would not be able to provide the specific testimony and documentation needed to contradict the office's argument. Still, I must rely on the evidence I have. In this matter, The evidence I have here is not enough to establish that the petitioner requires any care beyond what the Office of Inspector General has approved.

I suggest that if the petitioner's parents challenge future decisions, they be prepared to present detailed, specific testimony concerning the time it takes to perform each of his tasks. I also suggest that they follow [REDACTED] advice found in his letter supporting the agency's position and contact the county's Aging and Disability Resource Center (ADRC) and their IRIS case manager to determine what other services their son may be eligible for.

CONCLUSIONS OF LAW

The Office of Inspector General correctly determined the number of hours of personal care the petitioner requires to meet his medical needs.

THEREFORE, it is

ORDERED

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 Madison,
Wisconsin, this 17th day of September, 2015

\sMichael D. O'Brien
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 17, 2015.

Division of Health Care Access and Accountability