



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/167393

PRELIMINARY RECITALS

Pursuant to a petition filed July 17, 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 23, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly modified the petitioner's prior authorization request for Personal Care Worker 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: 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 April 30, 2015 the petitioner's provider completed a Personal Care Screening Tool (PCST).

3. On May 22, 2015 the petitioner's provider submitted a request for prior authorization of PCW hours based upon the aforementioned PCST. Specifically, the petitioner's PCST provider requested 35 hours per week of Personal Care Worker (PCW) hours per week with an additional 7 hours per week of travel time for 53 weeks.
4. On June 16, 2015 the Department sent the petitioner a notice stating that they modified her PCW request, and approved 19 hours per week of PCW time. The Department approved the travel time as requested. Travel time is not an issue on this appeal.
5. On July 9, 2015 the petitioner's provider submitted an amended prior authorization request seeking 28 hours per week of PCW time.
6. On July 20, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
7. The petitioner does not live alone.
8. The petitioner is a 26 year old with diagnoses of paraplegia and traumatic brain hemorrhage.

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 30 hours per week of PCW time. They later modified the request to 28 hours per week of PCW hours. The provider requested additional travel time. The travel time was approved, and is not at issue in this appeal. According to the letter from the respondent, the Department approved 19 hours per week of PCW time. At the hearing petitioner requested 35 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 a 26 year old with diagnoses of paraplegia and traumatic brain hemorrhage. She has an electric wheelchair that she uses to maneuver around her home.

Not at issue in this appeal are PCW hours for the following categories: bathing, back and neck brace placement/removal, toileting incontinence cares, transfers, and skin care. The Department approved all of the PCW time requested in these areas.

The Department reduced the amount of time that the petitioner's provider requested in the areas of dressing, grooming, and mobility.

With respect to dressing the PCST and the petitioner's provider requested two episodes of dressing the petitioner's upper and lower body. The PCST as well as the petitioner's testimony establish that the petitioner does not need PCW assistance for dressing her upper body. The Department also did not allow for one dressing episode of the petitioner's lower body as that is included in bathing. The Department correctly allowed PCW for dressing the petitioner's lower body one time per day. Given the statements on the PCST and the petitioner's testimony, I must conclude that this reduction was correct.

With respect to grooming the Department reduced the PCW time because the amount selected on the PCST was for someone who could not groom him/herself. The petitioner testified that she is able to groom herself. The statements on the PCST match this testimony. The Department allowed 70 minutes per week for the set up. This is correct.

With respect to mobility the Department did not allow anytime because the petitioner is able to maneuver around her apartment in her electric wheelchair. Although the petitioner would prefer more of an opportunity to be transferred and additional mobility, the petitioner agreed that she is able to maneuver around her home in her chair. Thus, the Department's reduction is correct.

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. In fact, the petitioner's testimony supported the areas in which the Department reduced the PCW time.

The petitioner argued that she needed more time for her PCW to come mid-day to cook for her and to put her on the toilet. She has incontinence bowel issues. She wears Depends when she is alone without her PCW, but cannot get those changed until the PCW arrives. This is somewhat compelling testimony. However, the issue that I have is that the Department approved all of the time requested in the area of incontinence care. The PCST was completed by a professional nurse, and should accurately reflect the amount of time necessary.

In looking at the times allowed 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 the petitioner's needs is the most thorough and credible determination in the record. The petitioner received a copy of the nurse consultant's letter prior to the hearing, yet petitioner offered no specific rebuttal to any of the points or time calculations offered by the Department. 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.

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 request for additional time with evidence to show the need for the additional time. However, based upon the evidence before me I must conclude that the respondent’s reduction was correct.

CONCLUSIONS OF LAW

The Department correctly modified the petitioner’s prior authorization request for Personal Care Worker 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 25th 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 25, 2015.

Division of Health Care Access and Accountability