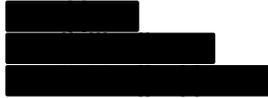




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/167839

PRELIMINARY RECITALS

Pursuant to a petition filed August 05, 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 08, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly modified the Petitioner's request for PCW services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: No Appearance

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

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. On April 2, 2015, Milwaukee County Disability Services completed a Long Term Care Functional Screen. At that time was determined that the Petitioner required assistance as follows:

Bathing – due to knee problems Petitioner needs assistance with washing her lower body, but Petitioner can wash upper body.

Dressing Upper Body – Petitioner reported independence with this task

Dressing Upper Body – due to knee and back pain, Petitioner needs help with lower body dressing.

Eating – independence reflected/reported by Petitioner

Mobility – Petitioner demonstrated ability to move about safely with her cane

Toileting – Petitioner reported independence with this task

Transferring – Petitioner demonstrated independence with this task

Medication administration – Petitioner reported independence with this task.

(Exhibit 3, attachment 5)

3. On June 18, 2015, Independence First completed a Personal Care Screening Tool (PCST) and determined the Petitioner needed assistance with her activities of daily living as follows:

Bathing – Level D

Dressing Upper Body – Level C

Dressing Upper Body – Level C

Grooming – Level D

Eating – Level A

Mobility – Level B

Toileting – Level B

Transferring – Level B

Medically Oriented Tasks – Medication reminder two times per day, Range of Motion two times per day/10 minutes each time, and CPAP machine set up, mask application, cleaning and maintenance 10 minutes per day.

(Exhibit 4)

4. On June 18, 2015, Independence First submitted, on behalf of Petitioner, a request for prior authorization of 84 units / 21 hours per week of PCW services for 53 weeks with an additional 28 units / 7 hours per week travel time for the PCW, at a cost of \$28,938.00. (Exhibit 4)
5. On July 21, 2015, the Department of Health Services (DHS) sent the Petitioner and Independence First notices indicating that the request for services was modified. (Exhibit 4)
6. The Department of Health Services approved 31 units / 7.75 hours per week of PCW services with 7 hours per week of travel time for the PCW. (Exhibit 4)
7. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 5, 2015. (Exhibit 1)
8. Petitioner lives alone. (PCST – Exhibit 4)
9. Petitioner is 54 years old and she has been diagnosed with osteoarthritis, muscle weakness and chronic neck pain. (Exhibits 2 and 4 – Home Health Certification and Plan of Care)

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)

Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

Independence First, on behalf of Petitioner, requested 21 hours per week of active PCW service hours and seven hours per week of travel time for the PCW. According to the letter from the Department of Health Services, Office of the Inspector General, DHS approved the 7 hours per week of travel time for the PCW, but modified the request for active PCW service hours, reducing it from 21 hours to 7.75 hours per week.

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, Independence First, completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located, under topic number 3165 on the Forward Health website:

<https://www.forwardhealth.wi.gov/WIPortal>

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), if any, are examined.

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*. A copy of the table was included as attachment 6 of the OIG letter, Exhibit 3.

The letter from the Office of the Inspector General indicated that DHS allowed the following times for the following activities:

1. Bathing: 30 minutes per day x 7 days	210 minutes per week
2. Dressing Upper Body:	zero minutes
3. Dressing Lower Body: 10 minutes x 7 days	70 minutes per week
4. Grooming:	70 minutes per week
5. Eating: zero	zero minutes
6. Mobility:	zero minutes
7. Toileting:	zero minutes
8. Transfers:	zero minutes
9. MOTs: zero minutes	zero minutes

Total: 350 minutes week

Bathing

For bathing, DHS allowed the maximum amount of time permitted by the Personal Care Activity Time Allocation Table: 30 minutes per day x 7 days a week = 210 minutes per week. The Petitioner testified that this time allocation was adequate.

Dressing

The PCST indicated that the Petitioner needed assistance with dressing her lower body because she has limited range of motion in her right shoulder and low back pain. However, the Long Term Care Functional Screen that was completed just two months earlier indicated that the Petitioner reported being independent with this task. The Petitioner testified that she can independently put on a button-down shirt and a front clasp bra, but that she would need assistance with a pull over shirt or rear clasping bra.

Given that the Petitioner previously reported being independent in dressing her upper body and given that she testified to being able to dress her upper body independently, if she makes wardrobe adjustments, it is found that DHS correctly denied time for the task of dressing her upper body.

DHS allowed 10 minutes per day, 70 minutes per week for assistance with dressing the lower body. This is the maximum allowed by the Personal Care Activity Time Allocation Table. There is nothing in the record to suggest the Petitioner needs more time for this task.

The Petitioner indicated that she recently broke her foot and is wearing a boot. First, this would not affect the determination to deny time for assistance with dressing the upper body, since a foot injury would not affect a person's ability to dress her upper body. Second, this is a new circumstance. **If Independence First believes the Petitioner needs additional PCW time, due to her foot injury, Independence First can file a new prior authorization request for that additional time.**

Grooming

The PCST indicates that the Petitioner needs assistance with grooming at level D, because she is able to groom herself, but needs help setting up her tools.

According to the Personal Care Activity Time Allocation table, individuals who need assistance with grooming at level D may receive 5 minutes of assistance, twice a day for a total of 10 minutes per day, 70 minutes per week. The Petitioner testified that this allocation of time was adequate.

Eating

The Petitioner does not dispute the fact that she is able to feed herself. As such, it is found that DHS correctly denied PCW time for this task.

Mobility

The Petitioner testified that she is able get around her home safely, using her cane. As such, it is found that DHS correctly denied time for this task.

Toileting

The Petitioner testified that she is able to toilet herself. Accordingly, it is found that DHS correctly denied PCW time for the task of toileting.

Transfers

The Petitioner testified that even though it is sometimes difficult, she is able to move from one surface to another on her own. As such, DHS correctly denied time for this task.

Medically Oriented Tasks

Under Medically Oriented Tasks (MOTs), the PCST indicated that the Petitioner needs assistance with medication reminders. However, the Petitioner testified that she is able to administer her medications on her own, as long as her pill box is filled correctly. As such, it is found that DHS correctly denied time for this task.

According to page 13 of the PCST instructions, (Exhibit 3, attachment 7) , range of motion exercise, “that is not part of a prescribed therapy program should be able to be completed during routine ADL [activities of daily living]. If ROM is unable to be completed during routine ADL, the documentation must include information as to why it cannot be completed during these activities. Documentation must also include a description of the ROM with which the PCW will be assistance...and an explanation as to why the ROM activities cannot be completed without the physical assistance of a PCW.” There is no indication in the record that the requested range of motion exercises are part of a physical therapy program that the Petitioner is currently participating in. Neither the PCST, nor the Home Health Certification and Plan of Care explain why the Petitioner is unable to maintain her range of motion through performing her activities of daily living, or why the physical assistance of a PCW is needed. As such, DHS correctly denied time for this task.

With regard to assistance with the CPAP machine. The Petitioner testified that she takes care of setting up the CPAP machine and putting on the mask. As such, DHS correctly denied PCW time for this task.

Total Time Needed for ADLs and MOTs

Based upon the foregoing, the actual time needed to completed Petitioner’s ADLs and MOTs is as follows:

1. Bathing	210 minutes per week
2. Dressing	70 minutes per week
3. Grooming	70 minutes per week
4. Eating	zero minutes per week
5. Mobility	zero minutes per week
6. Toileting	zero minutes per week
7. Transfers	zero minutes per week
8. MOTs	zero minutes per week

	350 minutes per week

Incidental Tasks

The Petitioner lives alone. Per the on-line Provider Handbook, topic 3167, for individuals who live alone, time equal to 1/3 of the time it actually takes to complete Activities of Daily Living (ADLs) may be allocated for incidental cares such as changing and laundering linens, light cleaning in areas used during personal care activities, eye glass care and hearing aids, meal preparation, food purchasing and meal service.

One third of 350 minutes is 166.67 minutes.

Thus, the total time allowed for PCW services works out to be:

350 minutes per week for ADLs
+166.67 minutes per week for incidental activities

466.67 minutes per week

466.67 minutes ÷ 15 minutes per unit = 31.11 units per week rounded to 31 units per week
31 units per week = 7.75 hours per week of personal care services.

DHS approved 7.75 hours of personal care service hours per week. As such, it correctly modified the prior authorization request for PCW services.

Petitioner should be aware that if Independence First can show a medical need for more time, it can always submit a request [an amendment/a new prior authorization] for additional time, with evidence to show the need for the additional time.

I note to the petitioner that her provider, Independence First will not receive a copy of this Decision.

CONCLUSIONS OF LAW

DHS correctly modified the Petitioner's request for PCW services.

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 13th day of October, 2015.

\sMayumi M. Ishii
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 13, 2015.

Division of Health Care Access and Accountability