



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/167968

PRELIMINARY RECITALS

Pursuant to a petition filed August 11, 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 (DHCAA or Division) in regard to Medical Assistance (MA), a hearing was held on September 29, 2015, by telephone.

The issue for determination is whether the Division correctly approved the petitioner's prior authorization request for PCW services at the level of 45.0 hours weekly.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By written submission of [Redacted] RN
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Rock County. He is certified for MA.

2. In June 2015, a prior authorization request (#...075) was submitted on the petitioner's behalf for 56.0 hours weekly of PCW services, beginning August 4, 2015. On July 2, 2015, the Division issued written notice that it was modifying the request by approving PCW time of 45.0 hours weekly.
3. The Division's basis for service denial was that the number of requested hours was not medically necessary. In particular, the Division concluded that a higher level of PCW services was not needed because PCW services do not include general supervision.
4. The petitioner, age 31, resides with his mother/caretaker in the community, and attends scheduled activities away from home five days per week. The petitioner has diagnoses of Traumatic Brain Injury (age four), hemiplegia (paralysis of one side of the body), blindness, epilepsy, neurobehavioral disorder and abnormal gait. He has functional limitations in the areas of bowel/bladder control, speech, endurance, vision, and ambulation.

A state Personal Care Screening Tool (PCST) review was performed by a nurse for the petitioner on May 11, 2015. The PCST program concluded that the petitioner requires 45 hours of PCW care weekly. The PCST results declared that the petitioner required PCW physical assistance with bathing daily, upper and lower body dressing daily, grooming daily, toileting eight times daily, incontinence care once four times daily, transfers, and ambulation. He also needs feeding help. The petitioner also requires physical help taking medications and placing/removing orthotics. The screening nurse also checked that extra time was needed for task completion due to his behavior and seizures.

5. The petitioner requires daily physical help with bathing, dressing, grooming, eating, toileting, transfers, orthotic placement, taking medication, and ambulation, as noted above. The petitioner also requires the service of others to purchase and prepare his food, do laundry, clean his bedroom, and take him to medical appointments. The Division was correct to add in the 25 percent time multiplier to account for the extra time needed for task completion due to the petitioner's behaviors and seizures.

### **DISCUSSION**

Personal care worker service (PCW), as defined at Wis. Admin. Code §DHS 107.112(1), is an MA-covered service, subject to prior authorization after the first 250 hours per calendar year. Wis. Admin. Code §DHS 107.112(2) (May 2009). In determining whether to approve such a service request, the Division employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be a medical necessity, appropriate, and an effective use of available services. *Id.* The Division argues that the authorization criteria have not been satisfied for the reason given in Finding #3 above. The petitioner bears the burden of establishing, by a preponderance of the credible evidence, that all of the requested care is needed.

The Department asserts that it has reduced the PCW time to the amount it believes is necessary to perform purely PCW tasks. The petitioner contends that s/he needs all of the requested care time.

The state code does restrict MA-covered PCW tasks as follows:

(b) Covered personal care services are:

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(2)(b). For tasks #1 through #4, #6, #8, #9, and #12, the Division's medical professionals have calculated typical task performance times, and placed them in a policy reference document, *Personal Care Activity Time Allocation Table*. Task performance times from the *Table* will be referenced below.

The caregiver testified in support of more PCW time for the petitioner, and supplied updated medical records with correct current diagnoses. Through hearing testimony, the petitioner established that he requires the following daily times for activities of daily living (ADL) tasks:

bathing – 30 minutes  
 dressing – 20 minutes  
 grooming – 30 minutes  
 eating – 40 minutes daily, plus 40 minutes for weekend lunch  
 mobility – 20 minutes  
 toileting – 60 minutes  
 transfers – 30 minutes  
 medication assistance – 10 minutes.

These are the Department's maximum standard time amounts for the tasks of bathing, dressing, grooming, mobility, medication assistance and transfers. These amounts bring total ADL time for the week up to 1,720 minutes weekly.

The Division's policy standard is to add no more than 25% of the ADL time to the authorization or services incidental to ADLs where a live-in caregiver is present. In this case, that would allow addition of 430 minutes weekly to the total. The Division also has a policy of adding 25% to the base 1,720 minutes to account for the extra time needed for task performance for a person with seizures or behavioral issues.

In this case, that adds another 430 minutes to the weekly total. When these amounts are added, the result is 2,580 minutes (1,720 + 430 + 430), or 43.0 hours weekly. The Division made a calculation error in approving 45 hours, and is willing to let the 45.0 hours approval stand for this prior authorization.

The petitioner's pleasant caregiver testified that the petitioner should be supervised around the clock due to his seizures and other limitations. I believe her. However, the MA program does not pay for supervision time; it pays for the time required to perform the specific tasks listed in code, above.

The caregiver also testified that it takes longer to perform some care tasks (bathing, dressing, mobility, toileting, transfers) for the petitioner, due to his seizures or lack of cooperation. *E.g.*, on average he has a seizure while being dressed, which adds 10 minutes to the task, twice weekly. On a weekly basis that adds 20 minutes to a task for which 140 weekly minutes were allotted. That additional 20 minutes is less than 25% of the dressing time (it's 14%), so the Division's 25% formula has adequately addressed this concern. There is no documented basis for me to add more time, in addition to the 25% multiplier given by the Division, for cares in this case. Thus, the Division's approval for 45 hours weekly is upheld.

### CONCLUSIONS OF LAW

1. The Division correctly authorized 45.00 PCW hours weekly for the petitioner, for the current authorization period.

**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 Madison,  
Wisconsin, this 9th day of November, 2015

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\sNancy J. Gagnon  
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 9, 2015.

Division of Health Care Access and Accountability