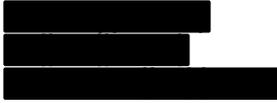




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/168070

PRELIMINARY RECITALS

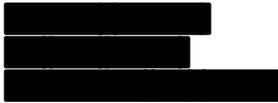
Pursuant to a petition filed August 14, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on September 09, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly modified the Petitioner's request for personal care worker (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: Marcie Oakes

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 (CARES # [redacted]) is a resident of Milwaukee County. Petitioner is 55 years old. At the time the PA request was submitted, the Petitioner lived alone. He now lives with his brother.

2. Petitioner's primary diagnoses include: cervical radiculopathy, cervical degenerative joint disease, schizoaffective disorder, chronic pain, neck sprain, lumbar sprain, anxiety, depression, asthma, hypercholesterolemia, dysplasia of prostate and muscle spasms. He has arm and leg numbness and chronic pain. Functional limitations include endurance and ambulation. He wears a neck brace. Pinched nerves limit use of his left arm. He uses a can for ambulation. He has left leg weakness and reports his leg "gives out." He reports a history of falls.
3. On May 21, 2015, a Personal Care Screening Tool (PCST) was completed for the Petitioner. The assessor determined the Petitioner has the following needs:
  - Bathing – Level D – Petitioner has weakness and pain from degenerative disc disease
  - Dressing – Upper – Level E – Petitioner's left arm and leg is weak and numb. He cannot effectively dress without help.
  - Dressing – Lower – Level E – Petitioner has sharp constant throbbing pain radiating to legs on left side. He cannot effectively dress without help.
  - Brace – Yes. Petitioner has sharp constant throbbing pain radiating to legs on left side. He cannot effectively apply brace without help.
  - Grooming – Level F – Petitioner has weakness and spasms of right hand, weakness and 10% use of left hand and left arm due to pinched nerve. He cannot effectively groom self.
  - Eating – Level F – Petitioner has hand spasms of right hand and cannot feed self
  - Mobility – Level C – Petitioner has a history of falls and requires stand-by assistance and physical intervention at all times
  - Toileting – Level C & D – Petitioner has prostate problems and hesitancy with urination. He requires physical help to get on/off toilet and help with cleansing. Petitioner wears incontinent products at night.
  - Transferring – Level D.
  - Medication Assistance – Level D – Petitioner requires reminders and help to obtain medication and water.
  - Behaviors – Yes. Petitioner has schizophrenia. He refuses some cares and is demanding on getting cares done to perfection.
4. On March 3, 2015, Petitioner had an MRI at Froedert. He was evaluated with extensive degenerative disc disease, moderate spinal canal stenosis, mild ventral cord deformity and severe stenosis at C3 and C4 and bilateral C5 and C6.
5. On or about March 6, 2015, the Petitioner was involved in a motor vehicle accident. On March 6, 2015, he had a CT scan of his head, C-spine and lumbar spine. He was found to have a small scalp hematoma, no cervical or lumbar spine fractures, scattered white matter disease, multilevel degenerative disc disease with mild degenerative spinal canal and moderate neural foraminal narrowing at C3/C4, C5/C6 and C6/C7, multilevel degenerative disc disease in the lumbar spine most pronounced at L5/S1 without significant spinal canal or neural foraminal narrowing.
6. On March 12, 2015, Petitioner was evaluated at Milwaukee Health Services. He was noted as not being in pain, no deformity or scoliosis noted in thoracic or lumbar spine.
7. On March 27, 2015, Petitioner was evaluated at Milwaukee Health Services. He was noted to have neck pain and was wearing a neck brace. He had "markedly diminished left grip, biceps and triceps strength." He was noted to have antalgic gait. He was also noted to be in no acute distress.

8. On April 1, 2015, Petitioner was evaluation at Milwaukee Health Services. He was reported to be in pain. He sought a pain clinic referral. He was again noted to have markedly diminished left grip, biceps and triceps strength as well as antalgic gait.
9. On May 1, 2015, Petitioner was evaluated at Milwaukee Health Services. He requested a pain medication refill. He complained of legs cramping. It was noted that he could not fully extend his right knee while sitting and his feet dorsiflex less than 90 degrees. A pain clinic referral was made.
10. On June 1, 2015, the Petitioner submitted a Prior Authorization (PA) request for 54.75 hours/week of PCW services.
11. On July 15, 2015, Petitioner was evaluated at a pain management clinic. The evaluation report indicates that Petitioner was unable to perform some spinal assessments. It was noted that his muscles are tender and he has spasms. He was also noted to have limited ROM of his neck/head, back, shoulder, elbows, knees and ankles. His gait was observed to be hesitant. His muscle strength was assessed at 3/5 for RUE, 2/5 for LUE, 4/5 for RLE and 4/5 for LLE.
12. The OIG initially approved 14.5 hours/week of PCW services for the Petitioner. After review of the Petitioner's case, the agency revised the approval to 20.75 hours/week.
13. On August 14, 2014, 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 following for the Petitioner:

- Bathing – 210 minutes/week
- Dressing – 140 minutes/week
- Brace – 0 minutes
- Grooming – 210 minutes/week

Eating – 0 minutes  
 Mobility – 0 minutes  
 Toileting – 140 minutes/day  
 Transferring – 210 minutes/week  
 Medication assistance – 0 minutes  
 Behaviors – 0 minutes  
 Services incidental to tasks – 303.33 minutes/week

At the hearing, the Petitioner and his caregiver testified. They testified that many of the Petitioner's difficulties come from his hand spasms as well as back pain and leg weakness/spasms. They testified that the Petitioner uses a brace on his left arm when he sleeps. He also wears a neck brace 20 hours/day.

With regard to eating, the Petitioner testified that his brother feeds him about two times/day. He stated that he is not able to hold utensils. Petitioner also testified that difficulties with bathing, dressing and grooming are related to hand spasms, back pain and leg weakness. For walking, he uses a cane and he recently got a walker. He testified that he requires stand-by assistance due to leg weakness. He further stated that he needs assistance opening medication bottles due to hand spasms and pain.

With regard to his behaviors, his caregiver testified that the Petitioner has been taking his medications and his behavior issues have greatly decreased. The Petitioner stated that his brother said he sometimes has mood swings and behaviors that make activities take longer.

For toileting, the Petitioner and his caregiver testified that he is incontinent 3x/day on bad days. They testified that some days are not as bad.

Based on the evidence submitted, I conclude that the agency properly determined the PCW services for the Petitioner. The agency allocated the maximum time generally allowed for bathing, dressing, grooming and transferring. I concur with the agency determination not to allow time for eating or medication assistance because the medical records do not support the Petitioner's testimony regarding hand issues. Further, the testimony regarding behavioral issues is inconsistent and does not support allocating additional time. Regarding mobility, the Petitioner is able to move about his home with a cane or walker. The regulations do not allow time for stand-by assistance. For toileting, the agency approved assistance 2x/day which is supported by the Petitioner's testimony that he requires assistance more times during the day only on "bad days."

The agency indicated that it would consider allowing additional time for brace application if the Petitioner submits a physician's order for such. Also, I would add that if the Petitioner has medical documentation to support his assertion that hand spasms and pain prevent him from completing tasks, he can submit a new PA with the supporting documentation.

### **CONCLUSIONS OF LAW**

The agency properly concluded that the Petitioner requires 20.75 hours/week of PCW services.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal be 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 9th day of November, 2015

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\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 9, 2015.

Division of Health Care Access and Accountability