



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/168543

PRELIMINARY RECITALS

Pursuant to a petition filed September 04, 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 October 06, 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 [REDACTED] Healthcare Service's request to provide personal care services to the Petitioner.

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: OIG by letter

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 is a resident of Milwaukee County.
2. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

3. On Jun3 16, 2015, ██████ Healthcare Services completed a Personal Care Screening Tool (PCST) and determined the Petitioner needed assistance with his activities of daily living as follows

Bathing – Level E
Dressing Upper Body – Level E
Dressing Upper Body – Level E
Grooming – Level F
Eating – Level G
Mobility – Level A
Toileting – Level F
Transferring – Level F
Medically Oriented Tasks needed – Medication Assistance, Bowel Program, and Range of Motion exercises 3 timed per day.

(Exhibit 2)

4. On June 19, 2015, ██████ Healthcare Services, on behalf of Petitioner, submitted a request for prior authorization of:

175 units / 43.75 hours per week of PCW services for 53 weeks,
An additional 42 units / 10.5 hours per week travel time for the PCW, and
7 units / 7 daily, 4 hour visits per week of Home Health Aide assistance.

All services were billed at a cost of \$61,189.03. (Exhibit 2)

5. On July 21, 2015, the Department of Health Services sent the Petitioner and ██████ Healthcare Services notices indicating that it approved the request for travel time for the PCW and it approved the request for Home Health Aide visits. However, DHS modified the request for PCW services, reducing it to 148 units / 37 hours per week. (Exhibit 2)
6. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on September 4, 2015. (Exhibit 1)
7. Petitioner does not live alone. (Exhibit 2)
8. Petitioner is 43 years old, and has a primary diagnosis of quadriplegia. His secondary diagnoses are migraines, neurogenic bowel, neurogenic bladder with supra pubic catheter. (Exhibit 2)
9. Petitioner ambulates using a wheelchair and controls the wheelchair using a sip and puff interface because he does not have use of his arms or hands. (Testimony of Petitioner; Exhibit 2)

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.

██████████ Healthcare Services, on behalf of Petitioner, requested 43.75 hours per week of active PCW service hours. According to the letter from the Department of Health Services, Office of the Inspector General, DHS approved 37 hours per week of PCW Services.

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, ██████████ Healthcare Services, 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 7 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: 20 minutes per day, 2x per day, x 7 days	140 minutes per week
Applying Anti-embolism hose 10 min per day x 7	70 minutes per week
3. Grooming: 15 minutes per day	105 minutes per week
4. Eating: 20 minutes, 2 x per day x 7 days	280 minutes per week
5. Mobility: zero minutes	zero minutes
6. Toileting:	
Emptying Catheter Bag, 3x per day x 7 days	105 minutes per week
7. Transfers: 45 minutes per day x 7 days	315 minutes per week
8. MOTs:	
Medication assistance 5 minutes per day x 7	35 minutes per week
Bowel program 25 minutes per day x 3 days	75 minutes per week
Range of Motion 20 minutes per day x 7	140 minutes per week
CPAP	zero minutes

Total: 1475 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. Petitioner indicated that this was acceptable.

Dressing

Per page 4 of the PCST instructions, one episode of dressing is included in the 30 minutes allowed for bathing. The PCST instructions can be found in attachment 4 of Exhibit 3. They may also be viewed on-line at:

<http://www.dhs.wisconsin.gov/forms/F1/F11133a.pdf>

DHS allowed the maximum amount of time permitted for the second episode of dressing both upper and lower body: 20 minutes per day x 7 days a week = 140 minutes per week. In addition, DHS allowed an additional 10 minutes per day, 70 minutes per week for assistance with placing TED hose. The Respondent indicated that this was reasonable.

Grooming

DHS allowed the maximum time for one episode of grooming, 15 minutes per day, 105 minutes per week. The Petitioner indicated that the home health aide helps with this in the morning so DHS's time allocation was acceptable.

Eating

DHS allowed 40 minutes per day for PCW assistance with two episodes of eating at lunch and dinner, opining that the Home Health Aide should be providing this assistance during the morning visit. The Petitioner did not contest this determination.

Mobility

DHS did not allow time for PCW assistance with the task of mobility. The Petitioner testified that he is independent with mobility, using a sip and puff interface to control his wheelchair. Thus, it is found that DHS correctly denied time for this task.

Toileting

The Petitioner uses a catheter. DHS allowed 5 minutes of PCW assistance with emptying the catheter bag, three times a day, for a total of 15 minutes per day of assistance, which is what was requested in the PCST by ██████ Healthcare Services. However, OIG noted in its decision, that it expected the Home Health Aide to empty the catheter bag in the mornings while he/she is there.

The Petitioner testified that he needs assistance emptying the catheter bag more frequently, because he consumes a large amount of liquid, to avoid a recurrence of kidney stones. The Petitioner testified that his catheter bag needs to be emptied three times just in the morning, once when he gets up, once after breakfast and again before the PCW leaves.

Home Health Aide assistance with activities of daily living is a covered service, "only when provided in conjunction with a medically oriented task that cannot be safely delegated to a personal care worker as

determined and documented by the delegating RN...” Wis. Admin. Code §107.11(2)(b)2. *See also topics 2124 and 2119 of the on-line provider handbook.*¹

By approving Home Health Aide services in the morning, DHS concedes that the aide is performing a medically oriented task that cannot be safely delegated to the PCW.

Petitioner was approved for one Home Health Aide visit per day, which would be considered an initial visit and such visits may last up to four hours per day:

Home Health Aide Visits

Within home health aide services, Wisconsin Medicaid reimburses for only two types of home health visits:

- *Home Health Aide Initial Visit.* The member's first home health aide visit in a calendar day. For BadgerCare Plus and Medicaid purposes, **an initial visit may last up to four hours.** Only one home health aide initial visit is reimbursable per calendar day per member, regardless of the number of providers.
- *Home Health Aide Subsequent Visit.* Each additional home health aide visit following the initial visit per calendar day. For BadgerCare Plus and Medicaid purposes, a home health aide subsequent visit may last up to three hours.

Topic #2113 of the on-line provider handbook, emphasis added

Home Health Aide visits must be maximized before other services, including personal care worker services, are covered:

Maximizing Visits

The time spent at home health aide visits must be maximized whenever possible before scheduling additional home health aide visits or personal care visits.

All cares that can be fulfilled utilizing the allotted four hours for an initial visit or the allotted three hours for a subsequent visit should be performed during that scheduled visit. Scheduling a subsequent visit or personal care visit later in the same day to complete cares that could have been completed during a previous visit that day would not be considered medically necessary because the previous visit was not maximized.

In addition, when case sharing with a personal care agency, home health aide visits must be maximized whenever possible before a PCW begins providing care. The home health aide should perform all personal cares in addition to the delegated nursing acts during the visit.

Topic #2113 of the on-line provider handbook, emphasis added

Based upon the foregoing, the Home Health Aide should be assisting the Petitioner with emptying the catheter bag during the four hours that he/she is there in the morning.

¹<https://www.forwardhealth.wi.gov/WIPortal/Online%20Handbooks/Display/tabid/152/Default.aspx?ia=1&p=1&sa=29&s=3&c=366>

DHS has allowed time for the PCW to assist with emptying Petitioner's catheter bag three times per day. If the Home Health Aide empties the bag three times in the morning and the PCW does so during the mid-day and evening visits, this is six episodes of catheter emptying per day. Consequently, additional time for PCW assistance with emptying the catheter bag will not be added at this time. If more frequent emptying of the catheter bag is needed to avoid "back up", [REDACTED] can always submit a prior authorization request for additional time.

Transfers

DHS allowed 45 minutes per day, 315 minutes per week for PCW assistance with transfers. The Petitioner indicated that this was acceptable.

Medically Oriented Tasks

Under Medically Oriented Tasks (MOTs), the PCST indicated that the Petitioner needs assistance with medication assistance, a bowel program, range of motion exercises and use of the CPAP machine.

Petitioner did not dispute the time allowed for medication assistance (35 minutes per week), assistance with his bowel program (75 minutes per week) and range of motion (140 minutes per week). However, the Petitioner disagreed with DHS's decision not to allow time for assistance with the CPAP machine.

According to page 1 of the PCST instructions, prior authorization is limited by what is ordered by a physician in the plan of care. This instruction is based upon Wis. Admin. Code §DHS 107.112(1)(a) which states that personal care services, "shall be provided upon written orders of a physician...according to a written plan of care". In addition, Wis. Admin. Code §DHS 107.112(4)(c) specifically lists "Personal care services not documented in the plan of care" as a non-covered service.

The physician's order, in the Home Health Certification and Plan of Care, submitted by [REDACTED] Health Care Services does not list assistance with the CPAP machine. Consequently, time for PCW assistance with this task cannot be approved, at this time.

Petitioner should note that [REDACTED] Health Care Services can amend/correct the Home Health Certification and Plan of Care and submit it with a new prior authorization request to obtain time for assistance with the CPAP machine.

Total Time Needed for ADLs and MOTs

1. Bathing: 30 minutes per day x 7 days	210 minutes per week
2. Dressing: 20 minutes per day, 2x per day, x 7 days	140 minutes per week
Applying Anti-embolism hose 10 min per day x 7	70 minutes per week
3. Grooming: 15 minutes per day	105 minutes per week
4. Eating: 20 minutes, 2 x per day x 7 days	280 minutes per week
5. Mobility: zero minutes	zero minutes
6. Toileting:	
Emptying Catheter Bag, 3x per day x 7 days	105 minutes per week
7. Transfers: 45 minutes per day x 7 days	315 minutes per week
8. MOTs:	
Medication assistance 5 minutes per day x 7	35 minutes per week
Bowel program 25 minutes per day x 3 days	75 minutes per week
Range of Motion 20 minutes per day x 7	140 minutes per week
CPAP	zero minutes
Total: 1475 minutes week	

Incidental Tasks

The PCST indicated that the Petitioner lived with a spouse or family member. Per the on-line Provider Handbook, topic 3167, for individuals who live with a family member, time equal to 1/4 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 fourth of 1475 minutes is 369 minutes.

Medical Conditions

It is undisputed that the Petitioner has a rare medication condition that presents a unique challenge to caregivers. DHS again allowed time equal to ¼ of the time in actually takes to complete Activities of Daily Living, 369 minutes. The Petitioner did not quarrel with DHS's determination.

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

1475 minutes per week for ALDs
 +369 minutes per week for incidental activities
 +369 minutes per week for rare medical condition

 2213 minutes per week

2213 minutes ÷ 15 minutes per unit = 148 units per week
 148 units per week = 37 hours per week of personal care services.

Accordingly, DHS's modification of the PCW service hours was correct.

I note that according to attachment 3 of Exhibit 3, that the Home Health Aide was only scheduled to be at the Petitioner's home for three hours per day. Because such services need to be maximized, the Home Health Aide should be providing services for four hours per day, so Petitioner has 7 hours per week of Home Health Aide services that were not previously being utilized.

I note to the Petitioner that his provider, [REDACTED] Healthcare Services will not receive a copy of this Decision. If Petitioner would like his provider to correct/amend the request for services, he should provide a copy of this decision to his provider.

CONCLUSIONS OF LAW

DHS correctly modified the [REDACTED] Healthcare Service's request to provide personal care services to the Petitioner.

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 16th day of November, 2015

\sMayumi M. Ishii
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 16, 2015.

Division of Health Care Access and Accountability