



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/169015

PRELIMINARY RECITALS

Pursuant to a petition filed September 25, 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 22, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly modified the Petitioner's PA request for personal care worker (PCW) services.

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: Robert Derendinger

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 is a resident of Milwaukee County. She is 41 years old and lives with family.

2. Petitioner's current diagnoses include: radiculopathy, type 2 diabetes, joint pain, chronic shoulder tendonitis, nerve dysfunction. She has a history of falls. Functional limitations include ambulation. Petitioner has a cane for ambulation.
3. On April 29, 2015, the Petitioner started physical therapy (PT) for her R shoulder injury. She was discharged on May 7, 2015 due to lack of progress and inability to tolerate the therapy. On July 31, 2015, the Petitioner had surgery on her shoulder.
4. On June 3, 2015, the provider completed a Personal Care Screening Tool (PCST) for the Petitioner. The screener assessed the Petitioner as having the following needs:
 - Bathing – Level C. Petitioner has decreased ROM in R arm due to shoulder injury. Requires assistance with bathing lower body. Hx of falls due to documented nerve dysfunction in back.
 - Dressing – Level C. Decreased ROM in R shoulder. Requires assistance with pulling tops over head and placement of socks and shoes.
 - Grooming – Level C. Needs assistance with combing hair and shaving due to decreased ROM in shoulder.
 - Eating – Level C. Unable to reach into cabinets and bend due to decreased ROM in R arm. Hx of falls from nerve dysfunction.
 - Mobility – Level C. Uses cane for ambulation. Hx of falls due to nerve dysfunction. States leg will give out and she falls to floor.
 - Toileting – Level C. Has raised toilet seat to assist in chair rise. Has difficulty getting on/off due to pain radiating down leg due to nerve dysfunction. Pain increases during bowel movements.
 - Transferring – Level C. Uses cane to transfer self but has fallen during transfers.
 - Medication Assistance – Level A. Independent. Uses nebulizer.The screener further noted that the Petitioner requires a bunionectomy but the surgeon has stated he will not perform the surgery until she has a PCW worker to assist during recovery. Petitioner's PCP notes that she has falls, chronic R leg weakness and pain due to lumbar radiculopathy, intervertebral disc disorder with myelopathy cervical, injury of shoulder and tendon of rotator cuff, carpal tunnel syndrome, hypertension.
5. On June 8, 2015, the Petitioner had a visit with [REDACTED]. The physician note indicates she reported intermittent heavy pressure across the low back with constant sharp pain that radiates down the R buttock and posterior R leg, occasionally into the R foot with a painful numbness/tingling and weakness in the R leg. She reported the pain is worsened with walking or standing in one position for a long period of time. Pain is lessened with decreasing activities. The note indicates the following for review of systems: Musculoskeletal: denies joint pain, neck pain, leg swelling. Also, the physician noted pain in back with palpitation to the low lumbar spinous processes and bilateral low paraspinal musculature. Strength was 5/5 for bilateral upper extremities and bilateral lower extremities. 4+/5 for R hip flexion. Sensation was noted to be decreased to the distal R lower extremity. Petitioner was noted to ambulate with a slightly antalgic gait with the aid of a cane. The physician also noted the MRI from 3/24/2015 revealed minimal left facet arthropathy with no disc herniation, nerve root compression, spinal stenosis or compromise of the neural foramina. He also noted an EMG from March 3, 2015 revealed a R side chronic L5 and S1 radiculopathy.
6. On June 23, 2015, the Petitioner's provider, [REDACTED], submitted a PA request on behalf of the Petitioner for 26 hours/week of PCW services with a start date of June 15, 2014. On August 3, 2015, the agency received an amendment request from the provider requesting an additional 84

units (21 hours) of PCW services for 8 weeks following Petitioner's shoulder surgery on July 31, 2015.

7. On September 3, 2015, the agency issued a notice to the Petitioner informing her that the agency approved 17.5 hours/week effective October 3, 2015 and discontinuing PCW services effective November 27, 2015.

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 17.5 hours/week of PCW services as follows:

Bathing – 30 minutes/day
 Dressing – 20 minutes/day
 Grooming – 30 minutes/day
 Eating – 0
 Mobility – 0
 Transfers – 0
 Toileting – 60 minutes/day.
 Services Incidental to Tasks (SITs) – 30 minutes/day

With regard to mobility and transfers, the agency noted that the PCST screener indicated the Petitioner requires "constant supervision" due to leg nerve dysfunction and falls. However, Petitioner is able to ambulate with use of a cane. The PCST instructions indicate that to receive assistance for mobility and transfer, the PCW must be actively involved in direct the member during the execution of the activity and physically participate in one or more steps of the activity. Supervision only does not meet that requirement. With regard to eating, there is no indication that the Petitioner requires assistance with the task of eating. Time for assistance with meal preparation is included as SITs.

The agency also noted that the Petitioner's amendment request did not meet the guidelines for submission. In particular, the request did not specify whether the additional units requested were "per week" or other. No additional information was attached to the amendment request.

Initially, the agency authorized 17.5 hours/week only until November 27, 2015 based on the Petitioner's need for assistance following shoulder surgery. Upon review, the agency noted that the Petitioner has experienced chronic back and shoulder issues and revised its determination to continue the services at the level of 17.5 hours/week through the original requested dated of June 14, 2016.

The Petitioner testified at the hearing. Her testimony was fairly consistent with the assessment of her needs in the PCST with the exception of bathing. Petitioner testified that she requires additional time for bathing because she needs 2 showers/day due to excessive sweating. Overall, the Petitioner indicated that her primary problem is the nerve condition with resulting back pain and leg weakness/pain. Her shoulder also gives her pain and limits her activities but to a lesser extent than the problem with her back and legs.

Based on the evidence provided, I conclude the agency properly allowed 17.5 hours/week for PCW services for the Petitioner. There is no evidence that the Petitioner requires PCW assistance with eating, mobility or transfers. The agency allocated the maximum time generally allowed for the other ADL tasks. With regarding to bathing, there is insufficient evidence to conclude that the Petitioner requires 2 showers every day. If the Petitioner can submit evidence in the form of medical documentation to the agency to demonstrate that she has a condition that causes excessive sweating, the agency may reconsider whether to allow additional time for bathing assistance.

CONCLUSIONS OF LAW

The agency properly determined that the Petitioner requires 17.5 hours/week of PCW services.

THEREFORE, it is ORDERED

That the Petitioner's appeal 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 14th day of December, 2015

\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 December 14, 2015.

Division of Health Care Access and Accountability