



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

In the Matter of

██████████
██████████
██████████
██████████

DECISION

MPA/169715

PRELIMINARY RECITALS

Pursuant to a petition filed October 29, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Department of Health Services in regard to Medical Assistance, a hearing was held on December 10, 2015, at Madison, Wisconsin. The record was held open to allow for post-hearing briefing, which concluded on February 17, 2015.

The issue for determination is whether the Division correctly determined the number of personal care worker (PCW) hours for the petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████
██████████

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Respondent:

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

By: ██████████, RN, BSN (telephonically)
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 26 year old resident of Dane County.

2. She has diagnoses of autism, incompletely-controlled seizure disorder, and congenital adrenal hyperplasia. Exhibit P-2.
3. On or about August 13, 2015, the petitioner's home health care provider, [REDACTED], submitted a Prior Authorization Request ("PA/R") form to the respondent, seeking approval of 30.5 hours per week of personal care worker services for the petitioner, plus 24 annual hours *pro re nata* (PRN) and 14 hours per week for travel time, for a period of 53 weeks.
4. On September 15, 2015, the respondent issued a letter to the petitioner informing her that it had modified her PA/R amount and approved a reduced level of personal care worker services to the rate of 22.5 hours per week. The respondent determined that the reduced level of time was the most appropriate level of services under the Department's definition of medical necessity. The respondent did not modify the PRN time or the travel time coverage requested.
5. On October 29, 2015, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the DHCAA reduction of authorized PCW services from 30.5 hours per week to 22.5 hours per week.
6. The respondent subsequently reviewed medical records concerning petitioner's capabilities in its decision to reduce the hours, including information supplied on behalf of the petitioner with her appeal filing. After review of the new documentation, the respondent changed the original modification, adding time related to seizure care. As a result the modification of the PCW time was changed to 27 weekly hours retroactive to the grant date of the PA/R.
7. Petitioner's physician asserted in a written statement that petitioner actually requires 50.26 hours per week of PCW services, but no PA/R amendment is on file for that level of services.

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).

Personal care workers can spend no more than one-third of their time performing housekeeping activities for a person living alone, and one-fourth of their time for a person living with other family members. Like all medical assistance services, PCW services must be medically necessary and cost effective. Wis. Admin. Code, §DHS 107.02(3)(e)1 and 3.

As drafted by the provider's nurse assessor, the Personal Care Screening Tool showed a need for 30.5 hours per week in PCW service, 24 annual PRN hours, and 14 hours of travel time each week. The screening tool allocates a specific amount of time in each area the recipient requires help, and is filled out by a nurse assessor from the home health agency. The PCST is a DHS-mandated computer program it believes allows an assessor to consistently determine the number of hours required by each recipient, but the respondent reserves the right to make adjustments when its professional consultant reviews the clinical documentation as a whole.

The petitioner's physician has written that petitioner requires 42 hours of PCW time weekly. Petitioner's mother asserts that petitioner actually requires 50.26 weekly PCW hours, including time for range of motion and skin care services.¹ However, without a decision on such a request, an appeal pertaining to the requested increase is premature. Petitioner submitted a letter from her physician in support of this request, however that does not change the fact that the respondent has not made a decision and the petitioner has not received a decision on that score. Petitioner's provider can request an amendment to the PA/R, and the respondent's decision on the amendment will provide petitioner with appropriate appeal rights.

The issue to be determined on this appeal is the modification, as modified, of petitioner's weekly PCW hours from 30.5 to 27. At hearing, the respondent's representative testified that the only modification was on the topic of eating. In that regard, the petitioner's mother testified that the PCST prepared by petitioner's provider incorrectly coded the petitioner as "C", when it should be "D" or "E." Such an assertion obviously places the respondent at a disadvantage, since its review of the matter is practically limited by the information supplied by petitioner's provider. Petitioner's issues with her own provider's PCST, whether related to the necessary number of PCW hours or coding of activities of daily living, are not properly addressed in an appeal to the Division of Hearings and Appeals. Instead, it is incumbent upon the petitioner to address her concerns directly with her provider in order to ensure that the most correct and current information is related to the respondent at the time that it submits a PA/R.

Petitioner very capably argues that petitioner requires PCW assistance with her eating ADL, due to her seizure risk. The respondent argues that time has already been allotted for seizure cares, specifically:

Additional time in case [petitioner] has seizures and to provide seizure interventions has already been approved and is included under "other considerations." Approving time for seizure interventions and time for monitoring for seizures at mealtime would be duplicative. Moreover, PCW services are task based. Time spent monitoring or supervising the member is not a covered service (attachment 5). The medical necessity of assistance with eating is not supported.

Respondent's Post-Hearing Correspondence (January 14, 2016).

Petitioner counters that,

[Respondent] argues that to select 'D' [coding for eating] with Epilepsy as the medical condition substantiating that selection would be duplicative of the time allotted through the 25% factor provided under Other Considerations 'Seizures'. ... Since the seizure percentage factor is not 100% but instead only 25% it is incorrect to state it is duplicative. At most there would be an overlap of 25% of allotted time. As an example, if 20 min of PCW time allotted for eating then 25% of that would be 5 minutes so at most 5 minutes would be duplicative. In fact, if answer 'C' is selected 0 min of PCW time is allowed to assist with eating resulting in actually no support at all for seizures since 0 times 25% is still 0. ...

Petitioner's Post-Hearing Correspondence (February 17, 2016).

¹ See, Respondent's Post-Hearing Correspondence (January 14, 2016).

Petitioner's analysis errs in assuming that the 25% allotted time for seizure cares must pertain to each ADL. The seizure cares time that was added is simply based upon medically necessary PCW hours as a whole; seizure cares are not allotted specifically for certain ADL's and not others. Still, it is true that adding PCW time for eating would, in fact, increase the amount of time allotted for seizure cares. The question then, is whether the petitioner has established that the respondent's modification of time for the eating ADL was incorrect, and if so what additional time should be added for petitioner's eating ADL.

Petitioner's provider-prepared PCST indicates that petitioner feeds self but requires physical assistance with set up. Petitioner's mother argues that petitioner's eating ADL should be coded 'D', which would indicate that member is able to feed self, but requires the presence of another person throughout the task for constant supervision to provide immediate intervention to ensure completion of task and provide physical intervention for at least one step of the activity during the performance of the tasks. Petitioner's physician corroborates this argument writing in September, 2015, that petitioner requires 42 weekly hours of PCW services and that,

... [Petitioner] needs hands-on assistance while cutting food and requires monitoring for safety as she could aspirate while having food in her mouth. Her seizures have been approached in a multi-disciplinary manner, but despite advice and many combinations of medications from endocrinology, gynecology, and several neurologists, we are unable to control her seizures without significant side effects from treatment. I think it is safest for the patient to have monitoring for safety instead of further attempts at medication to prevent seizures.

Exhibit P-1.

Petitioner's physician later updated her assessment in December, 2015, indicating that petitioner requires 50.26 hours of weekly PCW services. She did not appear at hearing to explain why her assessment increased by 8.26 hours between September and December of 2015, nor does her December letter provide an explanation. The December letter included a Weekly Plan of Care, which included specific allotments of time for all ADL's. Unfortunately, there was no indication as to how she arrived at those times, whether or not she took into account maximum times necessary to complete tasks, or if she utilized the PCST tool in arriving at her time allotments. As a result, I cannot rely upon her time allotments in addressing the issue of whether or not the respondent erred in its modification decision.

I further note that the respondent has allotted 270 minutes per week for seizure cares, and the petitioner has not established that additional time is medically necessary for seizure cares where petitioner's grand mal seizure activity is approximately once per week, with the typical seizure lasting approximately one minute. I understand the petitioner's concern regarding the need for constant supervision, especially while eating, but I do not find 30 minutes of allocated daily seizure cares to be insufficient based upon the record.

At this time, based upon the entirety of the record, I am unable to determine with any specificity the amount of additional PCW time needed by the petitioner. As stated above pertaining to needs for range of motion and skin care services, petitioner's mother should be aware that if petitioner's provider can show a medical need for PCW time related to eating, it can always request an amendment for specific additional time with evidence to show the need for the additional time.

CONCLUSIONS OF LAW

The petitioner has not established an error by the respondent in modifying the prior authorization requested PCW services from 30.5 hours per week to 27 hours per week.

THEREFORE, it is

ORDERED

That the petition for review hereby be, and herein 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 31st day of March, 2016

\sPeter McCombs
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 March 31, 2016.

Division of Health Care Access and Accountability