



FH  
[REDACTED]

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

In the Matter of

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA- 173678

**PRELIMINARY RECITALS**

On April 12, 2016, the above petitioner filed a hearing request under § 49.45(5), Wis. Stats., to challenge a decision by the Division of Health Care Access and Accountability (DHCAA or Division) regarding Medical Assistance (MA). The hearing was held on May 11, 2016, by telephone.

The issue for determination is whether the Division correctly approved a lower number of personal care worker hours than was requested by the petitioner.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

*Petitioner:*

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

*Respondent:*

Department of Health Services  
Office of the Inspector General  
P.O. Box 309  
1 W. Wilson St.  
Madison, WI 53701-0309

By: written submission of [REDACTED] [REDACTED], RN  
Division of Health Care Access and  
Accountability  
P.O. Box 309  
Madison, WI 53701-0309

**ADMINISTRATIVE LAW JUDGE:**

Nancy Gagnon  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She is certified for MA.
2. On February 11, 2015, a prior authorization request (#... [REDACTED]) was submitted on the petitioner's behalf for **30.75** hours weekly of PCW services, beginning March 3, 2016. On March 15, 2016, the Division issued written notice that it was modifying the request by approving PCW time of 27.75 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 this level of PCW services was not needed because the petitioner does not require more time above policy standards for physical assistance for extra clothing changes related to incontinence. The Division does agree that the petitioner requires help with bathing, one daily round of dressing/undressing, grooming, incontinence care, mobility and transfers.
4. The petitioner, age 86, resides with her adult child in the community. The petitioner has diagnoses of dementia, diabetes mellitus type II, coronary artery diseases, arthritis, and limited range of motion in her legs. She is wheelchair bound and has functional limitations in the areas of ambulation, endurance and incontinence.

A state Personal Care Screening Tool (PCST) review was performed by a nurse for the petitioner on January 27, 2016. The PCST program concluded that the petitioner requires 30.75 hours of PCW care weekly. The PCST results declared that the petitioner required PCW physical assistance with bathing daily, daily dressing, grooming twice daily, incontinence care four times daily, mobility and transfers. She feeds herself.

5. The petitioner requires daily physical assistance with bathing, dressing, grooming, toileting, mobility and transfers. She has an average of four daily episodes of incontinence. The petitioner will not use a commode in her bedroom, and does not like to wear Depends. The Department's policy declares its assumption that clothing changes are sometimes needed for an incontinence episode. For a person requiring toileting help who is *not* incontinent, the Department awards 5 to 10 minutes of help time per episode, in contrast to the 20 minutes per episode awarded here. The petitioner also requires the service of others to purchase and prepare her food, do laundry, clean her bedroom, and take/accompany her to medical appointments.

## 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. Where changing clothing is required due to incontinence, Department policy instructs evaluators to consider that time under the topic of incontinence/toileting, rather than dressing. *PCST Instructions*, Element 20-Dressing.

The petitioner does not contest the time allotments used by the Division for the tasks of bathing, grooming, mobility and transfers. At hearing, the petitioner's representative agreed that the petitioner has an average of four episodes of incontinence daily, all of which required a clothing change. She estimated that each episode requires 20 minutes of care, for an average of 60 minutes daily. However, 60 minutes daily is exactly the amount of time that the Division assigned for daily toileting in its calculation. Thus, the petitioner has not offered a reasonable explanation for deviating from the Division's calculation.

The petitioner requires the following daily times for activities of daily living (ADL) tasks:

bathing – 30 minutes  
 dressing – 20 minutes  
 grooming – 30 minutes  
 eating – 0  
 mobility – 20 minutes  
 toileting – 60 minutes  
 transfers – 30 minutes

190 minutes  
(NO areas of change from Division position).

These are the Department's maximum standard time amounts for the tasks of bathing, dressing, grooming, per-episode incontinence, mobility and transfers. These amounts bring total ADL time for the week to 1,330 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 332.5 minutes weekly to the total. Thus, the petitioner's PCW time for the period remains at 27.75 hours (1,330 minutes + 332.5 minutes = 1,662.5 minutes, or 27.75 hours).

### **CONCLUSIONS OF LAW**

1. The Division correctly determined that the petitioner requires 27.75 PCW hours weekly 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, **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 29th day of June, 2016

\s \_\_\_\_\_  
Nancy 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 June 29, 2016.

Division of Health Care Access and Accountability