



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MPA - 174940

PRELIMINARY RECITALS

Pursuant to a petition filed on June 9, 2016, 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 regarding Medical Assistance (MA), a hearing was held on July 26, 2016, by telephone. The record was held open for 10 days to allow petitioner to submit additional documentation. Said documentation was timely received.

The issue for determination is whether the respondent correctly modified petitioner's request for personal care worker (PCW) services.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

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

By: [REDACTED] RN, BSN (written appearance only)
Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On April 27, 2016, a prior authorization request (# [REDACTED]) was submitted on the petitioner's behalf for 38.5 hours weekly of PCW services, beginning June 22, 2016. On May 20, 2016, the respondent issued written notice that it was modifying the request by approving PCW time of 26.25 hours weekly.
3. The Division's basis for service modification was that the number of requested hours was *not documented* as medically necessary. In particular, the Division concluded that this level of PCW services was not needed because the provider did not include physician orders for two skin treatments and because no behaviors were documented that would interfere with his cares.
4. The petitioner, age 22, resides with his family in the community. The petitioner is autistic, and has medical status has not changed appreciatively since his last prior authorization was approved at 38.5 hours.
5. The petitioner requires daily physical assistance with bathing, dressing, grooming, eating, toileting, and skin care. The petitioner also requires the service of others to perform all Incidental Activities of Daily Living (IADLs), such as purchase and preparation of food, laundry, housekeeping, and taking him to medical appointments. A prescription for petitioner's Clindamycin specifically states that the medication is to be applied to the face at bedtime.

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. 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. At hearing on the issue of modification of a PA request, it is the burden of petitioner or the provider to establish the need and appropriateness of the requested services. Petitioner has done neither based on this record.

The respondent approved 26.25 hours of PCW services each week for the petitioner. To reach this figure the respondent initially used the Personal Care Screening Tool, a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The screening tool allots a specific amount of time in each area the recipient requires help, which the respondent A's reviewer can then adjust to account for variables missing from the screening tool's calculations. The respondent then adjusted the tool's results based upon Department maximum time allowances and considerations of petitioner's medical records.

The reason that the DHCAA now is looking closely at PCW requests is evident in a case such as this one. Petitioner's representatives did not provide specific times necessary for providing the PCW services, but instead testified that more time was needed than the maximums because of petitioner's unique circumstances and needs. Nothing was quantified. Without a better way to quantify the time for services, however, I find it difficult to add more time. An issue with family members being the personal care workers is that they may take more time to do care tasks due to extra carefulness or inexperience, and thus the Department has set maximum times for a typical care worker. In addition, while it is true that 38.5 hours were authorized in the past, it is likely that this request was the first one reviewed thoroughly by the respondent. Furthermore, petitioner's prescription clearly indicates that his skin medication is to be applied at bedtime, as opposed to the twice daily application argued by the petitioner. And testimony regarding the effect of petitioner's behaviors on the time needed to provide cares is not presently supported by medical documentation.

Petitioner's family should be aware that if they can show a medical need for more time, petitioner can always request an amendment for additional time with evidence to show the need for the additional time. If the prescription is incorrect, petitioner's physician should correct that; similarly, if behaviors are an issue, those should be medically documented as well. However, based upon the evidence before me I cannot conclude that the reduction to 26.25 hours per week was wrong.

CONCLUSIONS OF LAW

The respondent's modification of the request for PCW hours was appropriate based upon petitioner's documented medical needs and the Department's policies for PCW approval.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 13th day of September, 2016

\s _____
Peter 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 September 13, 2016.

Division of Health Care Access and Accountability