



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: HMO - 202550

PRELIMINARY RECITALS

Pursuant to a petition filed on July 2, 2021, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Department of Health Services, Division of Medicaid Services and its HMO agent, Division of Medicaid Services, regarding Medical Assistance (MA), a hearing was held on August 25, 2021, by telephone.

The issue for determination is whether the respondent correctly approved, with modification, Petitioner's request for personal care worker (PCW) services.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Michelle Rocca
Division of Medicaid Services
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. He lives alone in a private residence. He is certified as eligible for MA and is required by the Department to receive his MA

services via participation in a health maintenance organization (HMO) called MHS Health Wisconsin (MHS Health).

2. Petitioner testified that he suffers from chronic pain, obesity, and mental health issues.
3. Petitioner has historically been approved for 119 PCW units weekly.
4. MHS Health received a prior authorization request from Greenspan Home Health Care LLC, requesting 119 units per week of PCW services (29.75 hours/week or 4.25 hours/day) to assist with activities of daily living (ADLs)
5. Med Group Home Health Care conducted an independent personal care functional assessment on March 6, 2021 with Petitioner. The Med Group Home Health Care RN determined that Petitioner required 57 units/week for personal care services.
6. On June 9, 2021, a nurse with Independence First conducted a second independent personal care functional assessment with Petitioner. This assessment determined that petitioner required 55 units/week for personal care services.
7. MHS Health's Physician, Michael Skoch, MD, subsequently determined on July 29, 2021, that Petitioner's PCW services would be reduced to 57 units/week because neither the assessments completed by Med Group Home Health Care Health or Independence First, nor the medical records submitted by the provider substantiated the medical necessity of Petitioner's PCW request.
8. On August 11, 2021, the Department's Division of Medicaid Services sustained the HMO's decision to approve the PCW request, as modified.
9. On July 2, 2021, Petitioner filed an appeal with the Division of Hearings & Appeals.

DISCUSSION

MHS Health is required to provide or arrange for the provision of medically necessary and appropriate medical services for its enrollees as required under Wis. Stats. § 49.46(2), and Wis. Admin. Code § DHS 107(1). Wisconsin Administrative Code § DHS 107.112(1) states that Wisconsin Medicaid covered personal care services are those medically oriented activities that are 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. Specifically, covered types of personal care 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(1)(b).

Department policy provides that personal care hours may be approved in an amount needed to provide services that are incidental to direct care. These “incidental cares” include changing and laundering of bed linens and clothing; light cleaning; meal preparation; food purchasing; and meal service. For individuals who live alone, the maximum amount of time that may be allowed for such incidental cares is 33% of the time authorized for direct care with activities of daily living and medically oriented tasks. See *On-line Provider Handbook*, topic 3167.

To obtain a PA for personal care services, providers are required to submit documents to the MA program that accurately and completely demonstrate the need for the requested personal care services. Providers are to use the Personal Care Screening Tool (PCST) to determine the allocation of PCW time needed. The PCST is a tool that collects information on an individual’s ability to accomplish activities of daily living, instrumental activities of daily living, medically oriented tasks delegated by an RN and the member’s need for personal care worker assistance with these activities in the home. The PCST must be completed based on a face-to-face evaluation of the member in the member’s home. The screener must directly observe the member performing the activity before selecting the member’s level of need. A Personal Care Activity Time Allocation Table is used by providers to assist in prorating time for service-specific activities provided by personal care workers.

I note that the entirety of the documentary record in this matter consists of: (1) petitioner’s appeal document with attached Personal Care Services list [Exhibit P-1]; (2) a July 29, 2021, summary prepared by respondent’s nurse consultant Peggy Corp, RN [Exhibit R-1], and (3) correspondence from nurse consultant Michelle Rocca, RN [Exhibit R-2]. Notably lacking from the file are either of the PCSTs prepared by the respondent or its agents, any medical record documentation, and any physician orders relating to petitioner’s care.

The respondent’s testimony and summary documentation specify that the respondent received two independent assessments identifying Petitioner’s needs for 57 units of PCW time 55 units of PCW time. I am unable to make a finding of fact regarding these numbers, since neither the PCSTs nor their respective authors were presented at hearing.

The respondent conceded at hearing that the PCST finding a need for 55 units incorrectly indicated that the petitioner resides with family. Petitioner resides alone. This fact is relevant, as it does impact the calculation of total units approved. I have no way of determining how or if petitioner’s residency status was considered in the 57 unit and/or 55 unit determinations.

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 testified that Petitioner is obese, he suffers from mental health issues (bipolar and PTSD), he cannot transfer, he uses a cane or walker to ambulate, he falls regularly, and he suffers from drop-foot, neuropathy, and early-onset arthritis. Petitioner’s PCW added that there is no way to address all of petitioner’s needs in 2 hours per day (approximately 56 units per week). Again the record is deficient, lacking any medical record documentation that could corroborate the testimony received. I do note, however, that I found petitioner’s testimony to be credible, as well as that of his witnesses. Having thereby established his position, the burden shifted to the respondent to rebut that testimony and substantiate the modification of petitioner’s PCW time.

As noted, above, the respondent provided no documentary evidence to corroborate the testimony provided by its witnesses, conceded an error in one the PCSTs it relied upon in taking its position, and the only explanation as to why Petitioner's PCW hours were reduced from 119 units to 55 or 57 units was that the current pandemic limited the ability to conduct timely reassessments. Still, there was nothing to corroborate how the time period between reassessments relates to the reduction of Petitioner's PCW needs. At some point Petitioner was approved for 119 units; the current request is for a continuation of the 119 weekly units. The respondent has not established that Petitioner's health has improved or his circumstances have changed since 119 units were approved. While it could be that the 119 units were previously approved incorrectly, I have nothing to substantiation such speculation on my part.

In the end, the respondent has not established on the record before me that it correctly modified Petitioner's request for 119 PCW units. Therefore, I will remand this matter back to the Department and HMO to approve the requested PCW services.

CONCLUSIONS OF LAW

1. The petitioner presented sufficient evidence to support the medical necessity of PCW services in the amount of 119 units per week as requested;
2. The HMO incorrectly modified the petitioner's request for PCW services.

THEREFORE, it is

ORDERED

That this matter is remanded with instructions to the HMO to approve the petitioner's request for PCW services in the amount of 119 units per week. This action shall be taken within ten days of this decision.

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, 4822 Madison Yards Way, 5th Floor North, 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.

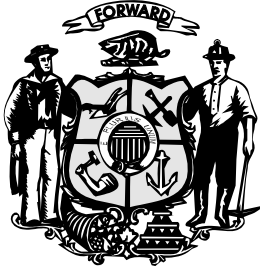
APPEAL TO COURT

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 16th day of September, 2021

\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 16, 2021.

Division of Medicaid Services