



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**

Case #: HMO - 203405

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on October 9, 2021, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Medicaid Services regarding Medical Assistance (MA), a hearing was held on December 14, 2021, by telephone.

The issue for determination is whether the DMS by its HMO agent, MHS Health Wisconsin (MHS), correctly determined the number of petitioner's personal care worker (PCW) hours.

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: Sandra Szabo, Member Rights Advocate, MHS  
Division of Medicaid Services  
PO Box 309  
Madison, WI 53701-0309

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. Petitioner is enrolled in MHS, a Wisconsin licensed health maintenance organization (HMO) that contracts with the Department of Health Services (DHS) to provide and pay for Medicaid (MA)

benefits for SSI eligible persons and is responsible for making benefit coverage determinations under the MA plan.

3. Petitioner's diagnoses include neuropathy, degenerative disc disease, hypertension, degenerative disc disease, hypertension, and uncontrolled diabetes Type 2 with hyperglycemia.
4. On June 11, 2021, a prior authorization (PA) request was submitted on petitioner's behalf by Buford Personal Care for her to receive 97 units/week of personal care worker (PCW) services. The PA request contained a Personal Care Screening Tool (PCST) completed by Buford Personal Care in May 2021.
5. An independent personal needs assessment was completed with petitioner on August 10, 2021 by Med Group Home Health Care to determine the medical necessity of the PA request.
6. On August 25, 2021 MHS notified petitioner that it had reviewed the clinical information and the functional assessment and concluded that she only requires 77 units/week of PCW services, as there was no clinical documentation to substantiate the need for daily hands – on assistance with ADLs at the level requested.
7. On October 9, 2021 petitioner appealed that decision to the Division of Hearings and Appeals.
8. On November 5, 2021, a DHS Consultant issued a letter and upheld the decision by MHS.

### DISCUSSION

MHS 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. 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(1)(b).

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.

The MHS and DMS determined that the PCST completed by Med Group Home Health Care was a more accurate a depiction of petitioner's needs along with the medical records submitted to show her medical history, including doctor's notes and orders. The time allowed by MHS was for bathing (30 minutes/day, and includes one change of clothes), upper and lower body dressing (10 min/day each), grooming (30 min/day) toileting (20 minutes/day or 2 times/day). The MHS allowed 219 minutes/week to be used PRN (Pro Re Nata) to account for acute needs e.g., when she is having "bad days".

When prior authorization is requested, it is the provider's responsibility to justify the need for the service. Wis. Adm. Code, §DHS 107.02(3)(d)6. In sum, the petitioner's provider has not provided evidence to support a different result than that determined by MHS. Even the testimony at hearing did not show additional hands-on PCW hours are medically necessary on a daily basis despite the petitioner's adamant that she did. There is no clinical documentation to determine petitioner's functional abilities as she alleges except for the doctor's notes which indicate she has full range of motion and no gross motor deficits. During the Med Group Home Health Care visit, an RN went through each of the functional areas on the PCST with the petitioner, spoke with her regarding how she performs each activity of daily living, and obtained verbal and visual validation from her that she may need partial physical hands-on assistance from the personal care worker for some activities of daily living. The petitioner, her provider, and the medical specialists she sees may always review her PCW needs and provide increased documentation to support an amended or new request for additional ongoing PCW time if they believe more time is medically necessary. This is not intended to diminish the challenges petitioner faces, but rather to explain that the documentation must be there to support the requested services. Based on the evidence before me, I must conclude the HMO correctly modified the PA request here.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### **CONCLUSIONS OF LAW**

The DMS and its agent have correctly authorized 77 units/week of PCW services for the petitioner.

**THEREFORE, it is** **ORDERED**

The petition for review 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, 4822 Madison Yards Way 5<sup>th</sup> Floor, 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.

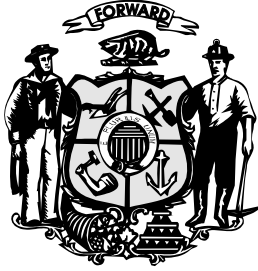
## APPEAL TO COURT

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 Milwaukee,  
Wisconsin, this 15th day of December, 2021

\s \_\_\_\_\_  
Kelly Cochrane  
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 15, 2021.

Division of Medicaid Services