



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

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In the Matter of

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

**DECISION**  
Case #: MPA - 204691

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on March 9, 2022, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Medicaid Services regarding Medical Assistance (MA), a hearing was held on April 21, 2022, by telephone.

The issue for determination is whether the agency correctly reduced petitioner's personal care worker services.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

Respondent:

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

By:

Division of Medicaid Services  
PO Box 309  
Madison, WI 53701-0309

**ADMINISTRATIVE LAW JUDGE:**

Beth Whitaker  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # ) is a seven year old resident of La Crosse County who lives at home with his family and attends school.
2. Petitioner is diagnosed with general idiopathic epilepsy, is feeding tube-dependent, and has quadriplegia and developmental disability among other conditions.
3. On December 29, 2021, a Personal Care Screening Tool was completed by [REDACTED] with the provider Almost Family, requesting 85 unites a week (21.25 hours or 4.25 hours per day, five days per week in personal care services.
4. On January 13, 2022, the RN completed a Care Plan Attachment to the PA request, signed by Stephen Randall, M.D., for the certification period from January 26, 2022 to January 25, 2023. The physician orders were for up to 21.25 hours (85 units) per week x up to 4.25 hours (17 units) per day five days per week to assist with bathing, dressing, tube feeding, transfers and hygiene needs. The document noted that petitioner is totally dependent for all ADL's, is not confined to the home and needs the assistance of two people. There were no physician's orders on the Plan of Care for assistance with prosthetics, for grooming, mobility or incontinence.
5. On January 18, 2022, Almost Family submitted a Prior Authorization Request for personal care services on behalf of petitioner, requesting 85 units (21.25 hours / week or 4.25 h/day) of weekly personal care services and up to 20 units (five hours) per week for travel time, identifying Stephen Randall, M.D. as the prescribing provider.
6. On February 2, 2022, the agency approved the PA request [REDACTED] with modifications, approving 46 units per week (11.5 hours/week x 53 weeks and 20 units per week travel time) allotting time for bathing, a second dressing, tube-feeding and incidental services.
7. On February 2, 2022, the agency issued to Almost Family a notice that its PA request was approved with modifications, specifically that it approved 2,438 hours PCW services for the certification period, 46 units per week and 20 units per week travel time. The decision letter noted regarding the modified approval that "the requested services do not align with the services documented on the physician's orders." The letter invited the provider to resubmit the request.
8. On February 2, 2022, agency issued to petitioner [REDACTED], a Notice of Appeal Rights, informing that the PA request for 4505 unites and 1060 units of travel time was approved with modification to 2,438 units because "your provider's request could not be authorized based on the information provided. More info needed about condition and/or a correction to the submitted information is needed."
9. On March 14, 2022, the Division received petitioner's request for fair hearing by U.S. Mail, postmarked March 9, 2022.

## DISCUSSION

MA coverage of PCW services is described in the Wis. Adm. Code, §DHS 107.112. The Wisconsin Medicaid Program covers 13 basic personal care tasks as well as medically oriented tasks and services incidental to personal cares. Services are specified in subsection (1) and are defined generally as "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." Examples of covered services are assistance with bathing, with getting in and out of bed, with mobility and ambulating, with dressing and undressing, and meal preparation. In determining the number of PCW hours to authorize the DMS

uses that standard along with the general medical necessity standard found at Wis. Adm. Code, §DHS 101.03(96m). It provides:

“Medically necessary” means a medical assistance service under Ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
  2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
  3. Is appropriate with regard to generally accepted standards of medical practice;
  4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
  5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
  6. Is not duplicative with respect to other services being provided to the recipient;
  7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
  8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
  9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, §DHS 101.03(96m).

To determine the number of PCW hours to authorize the agency uses the Personal Care Screening Tool (PCST), a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The PCST is a tool that collects information on an individual's ability to accomplish activities of daily living (ADLs), IADLs and medically oriented tasks (MOTs) delegated by a registered nurse (RN), and the member's need for PCW assistance with these activities in the home. The screening tool allots a specific amount of time in each area the recipient requires help, which the agency's reviewer can then adjust to account for variables missing from the screening tool's calculations. See PA PCST Topic 11497, parameters for making selections.

In this case, there are few disputes about how much time is needed for each type of covered personal care service. The agency agreed with the provider's rationale and approved what was requested in full for bathing (150 minutes per week), dressing (100 minutes per week) and tube-feeding (75 minutes), transferring (225 minutes). No time was requested for eating.

The agency denied requests for 100 minutes per week for grooming, 100 minutes per week for mobility, 50 minutes per week for orthotic assistance and 150 minutes per week for incontinence care, all because these services were not ordered in the physician's plan of care. The plan of care, signed by Stephen Randall, M.D., on January 13, 2022, ordered assistance with “bathing, dressing, tube feeding, transfers and hygiene needs as client is totally dependent for all ADLs and requires the assistance of two people.”

The agency did not provide any other reasoning for denial of these requested services and I have no reason to believe they would not be approved if the physician documented the need in the form of orders. However, I have no authority to overlook the fact that they were not documented. The requirement that personal care services be provided as ordered by a physician is a clear and necessary standard for determining the services to be medically necessary. See Wis. Admin. Code DHS 107.112. The statement that the petitioner is dependent on others for “all ADLs” is insufficient to justify the requests. ADL is not

defined in the physician orders and it is unknown whether the specific care the physician finds necessary falls within covered personal care services as defined in the rules at DHS 107.112(1)(b).

The provider also requested requested 214.25 minutes per week for incidental services. The agency allows only 25 percent of direct care minutes for those who live with others, which is 137.5 minutes. Petitioner lives with others. This modification is consistent with the agency's guidelines and appropriate in this case.

The provider requested added time for a rare medical condition. The agency did not allot time for a rare medical condition as the criteria listed in the PCST Completion Instructions were not met. The agency's criteria, detailed in its Parameters for Making Selections document, are that the condition must be a condition that 1) affect provision or care; 2) is rarely diagnosed and either 3) requires the worker to use protective equipment prescribed for the member such as a helmet or back brace or 4) requires the worker to adhere to precautions specific to the member (and documented in the plan of care) to accommodate the rare medical condition. Based on this record, it does not appear that these criteria are met.

The petitioner's grandmother, with whom he lives, appeared at hearing and testified regarding petitioner's need for personal care services. She testified credibly that he has more need for services than has been approved here and that his care is too much for her to do without more assistance. I am sympathetic to the challenges she described; however, I must agree with the agency regarding the amount of time allowed under this PA. 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.

I also note that in its letter to the requesting provider, the agency did inform the provider that "the requested services do not align with the services documented on the physician's orders. Please resubmit request..." I have no evidence that a resubmitted request with additional documentation was submitted to the agency. The evidence of medical necessity remains inadequate.

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. Services shall be performed according to a written plan of care for the recipient developed by a registered nurse for purposes of providing necessary and appropriate services, based on a review and interpretation of the physician's orders for the services. If the hours awarded by the agency are insufficient to meet petitioner's needs, the provider may submit a new PA and explain more fully the need for additional hours.

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. In other words, I cannot change the outcome were I find it to be unfair.

### **CONCLUSIONS OF LAW**

The agency correctly modified the PA request for personal care services because some of the requested services were not ordered by a physician in the plan of care and were therefore not shown to be medically necessary.

**THEREFORE, it is**

**ORDERED**

That the petition for review be 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 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

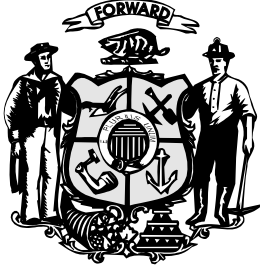
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 3rd day of May, 2022

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Beth Whitaker  
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 May 3, 2022.

Division of Medicaid Services