



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**

Case #: HMO - 205193

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on May 2, 2022, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the MHS Health Wisconsin-HMO regarding the modification of personal care worker services authorized under Medical Assistance (MA), a hearing was held on June 29, 2022, by telephone. At the request of both parties, the record was held open for 20 days for the petitioner to submit additional information and 20 days for the respondent agency to provide rebuttal information. This information has been received.

The issue for determination is whether the Department, by its agent, MHS Health Wisconsin, has correctly modified the petitioner's requested PCW hours from 120 units per week (i.e., 30 hours) to 61 units per week (i.e., 15.25 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: Renee Helbach, Appeals Clinical Coordinator  
MHS Health Wisconsin  
4168A N. 92nd Street  
Milwaukee, WI 53222

**ADMINISTRATIVE LAW JUDGE:**

Kenneth D. Duren  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a 54-year-old married resident of Milwaukee County; she lives with her husband; and she is certified as eligible for Medical Assistance (hereafter, “MA”) and is required to receive her MA services from a health maintenance organization (HMO). She has the following conditions and symptoms: essential hypertension; hypokalemia; hyponatremia; an irregular heart rhythm; GERD; osteoarthritis in the right knee; anxiety; a history of depression; panic disorder with agoraphobia; obesity (BMI in the 30-39.9 range); acute non-recurrent maxillary sinusitis; plantar fasciitis, right side; psoriasis; a vitamin D deficiency; venous stasis dermatitis in her bilateral lower extremities; a history of migraine headaches; primary insomnia; drug-induced insomnia; psychophysiological insomnia; drug-induced constipation; chronic pain syndrome; leg swelling; chronic pain in bilateral lower extremities; a history of closed non-displaced fracture of left big toe with routine healing; a [REDACTED] cyst in her [REDACTED]; and she is a current smoker. Apparently, she uses a cane and/or walker to assist with ambulation. She also utilizes at least one splint and has recently begun using prescribed compression stockings and bandages.
2. The petitioner’s health maintenance organization (HMO) is MHS Health Wisconsin, which is a contracted agent of the Wisconsin Medical Assistance Program (“WMA”) and the Wisconsin Department of Health Services.
3. The petitioner takes acetaminophen; amlodipine-olmesartan; [REDACTED]; hydrochlorothiazide; ibuprofen; [REDACTED] [REDACTED]; methylprednisolone; zolpidem; [REDACTED]; Trileptal; Lasix; Topamax; and a multivitamin.
4. The petitioner’s lower extremities were evaluated on April 21, 2022, by Sunitha Gundamraj, M.D., with 5 of 5 ratings on L/R iliopsoas, quadriceps, hamstrings, foot dorsiflexion, extensor hallucis longus and gastrocnemius areas. Her R/L deep tendon reflexes patellar and Achilles were rated 2/4 by Dr. Gundamraj.
5. On or about January 26, 2022, a Personal Care Screening Tool assessment was performed to make a personal needs screening review of the petitioner by a qualified screener from Home Health Care ([REDACTED], R.N.), who determined that the petitioner required 65 units (i.e., 16.25 hours) per week of personal care worker services. See, Exhibit #4, attached PCST.
6. RN [REDACTED] also completed a Personal Care Activity Time Allocation Table assessment tool on January 26, 2022, also concluding that the petitioner required 65 units per week of PCW services. See, Exhibit #4, attached Time Allocation Table.
7. At the assessment of January 26, 2022, the HMO and its assessing nurse (RN [REDACTED]) determined that the petitioner requires assistance with bathing (210 minutes per week); lower body dressing (70 minutes per week); grooming (105 minutes per week); transfers (210 minutes per week); pro-re nata allocation (186 minutes per week); and a 25% add-on for incidental cares as she lives with another adult. These allocations totaled 781 minutes per week of direct PCW services, plus 195.24 minutes per week for the 25% add-on or a total of 976.25 minutes or 65 units per week. (A “unit” = 15 minutes of service time.) See, Exhibit #4, attached Time Allocation Table.
8. On or about March 12, 2022, the petitioner’s home health care agency (Jackson Care LLC) requested approval from the petitioner’s health maintenance organization, MHS Health Wisconsin for 30 hours per week PCW services.
9. On or about March 15, 2022 the petitioner was informed by written notice of that date of the modification of approved PCW services to 16.25 hours per week. She grieved the matter to her health maintenance organization.

10. The modification described in Finding of Fact No. 9, above, was subsequently affirmed by the HMO Grievance and Appeal Committee on April 14, 2022, and the Committee affirmed PCW services at the 16.25 hours per week. See, Exhibit #1, attached Notice of Decision on Your Appeal issued by MHS Health Wisconsin on April 14, 2022, at p. 1.
11. On May 2, 2022, the petitioner appealed the HMO grievance decision of April 14, 2022 by filing a request for fair hearing with the Division of Hearings & Appeals in DHA Case No. HMO-205193.
12. On June 3, 2022, after the petitioner appealed, the Department's Nurse Consultant (Kathleen Healy, R.N.) reviewed the HMO determination of the petitioner's personal care needs. Healy determined that the petitioner requires assistance with bathing (210 minutes per week); lower body dressing (70 minutes per week); grooming (105 minutes per week); (toileting, 140 minutes per week); and transfers (210 minutes per week). These allocations sub-totaled at 735 minutes per week of direct PCW services, and Healy then added 25% add-on for incidental cares as the petitioner lives with another adult. These allocations totaled 918.75 minutes, or 61 units per week. Healy recommended that the correct level of services the petitioner had demonstrated she needed was 61 units per week, not 65 units per week. Healy also recommended 48 units per 6 months of pro re nata hours to be used as needed. See, Exhibit #1, attached Letter of Kathleen Healy, R.N., dated June 3, 2022, at p. 10 of 11.
13. The record was held open for 20 days for the petitioner to submit recent clinical records for consideration by the Division; and a copy to be provided to the Department and its agents. This has occurred.
14. The petitioner has reported in clinical visits in June and July, 2022, to her physician and a physical therapist that she is experiencing increasing bilateral edema and lower leg pain and left knee pain and limitation of flexion and mobility, with pain that she rates as 10/10. The etiology is currently simply stated as "chronic pain of both lower extremities" and "bilateral leg edema." Apparently, etiology for each is unknown. See, Exhibit #4, (i.e., miscellaneous recent clinical records submission.) And see, Exhibit #5.
15. The petitioner has begun to be treated at a "lymphoedema clinic" in June & July, 2022, apparently to treat and follow her bilateral leg edema. On May 11, 2022, Dr. Sunitha Gundamraj, M.D, diagnosed the petitioner to have "...bilateral lower extremity lymphedema; left lower extremity, right lower extremity symptoms with increased pain/symptoms, impaired tissue mobility, increased swelling, impaired muscle length/flexibility, impaired tissue/wound healing, impaired mobility, impaired activity tolerance." See, Exhibits #4 & #5.
16. Progress Notes prepared by Dr. Assad Ullah on June 27, 2022, state that the petitioner has a 5 rating for strength bilaterally in her deltoids, elbow flexion, elbow extension, hand grip and wrist extension. Likewise, she has a 4+ rating for strength bilaterally in knee extension, knee flexion, and ankle dorsiflexion, and a 4 rating for hip Flexion/Iliopsoas. See, Exhibits #4 & #5.
17. After reviewing the petitioner's additional clinical records (as submitted by her after the hearing, as Exhibit #5), the Department's HMO representative stated "Our Medical Director Robert Lyon, MD reviewed the records on 7/8/2022 (review below).

I reviewed all of the new medical records. Member has had a reported worsening of her symptoms of leg pain and [REDACTED] as well as knee pain, with c/o's of poor balance and falls. Getting treated at lymphedema clinic and neurology work up. No definitive dx yet. Getting an EMG.

I recommend repeating the PNA (ALJ's note, the physician means the "personal needs assessment") due to a change in her condition and await those results as well as the

completion of her neurologic work-up and lymphedema treatment to determine future PCW needs.

Dr. Lyon

As a result, the HMO representative stated that the HMO was in the process of ordering a new PNA.

### DISCUSSION

The Department's contracted HMOs are essentially bound to provide the medical coverage that Medical Assistance would normally provide under relevant state law and rules.

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-quarter of their time performing housekeeping activities when the recipient lives with another adult, as here. 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.

The Department mandates, and the HMO utilizes, a 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 Department's designated reviewer can then adjust to account for variables missing from the screening tool's calculations. As noted in the findings, petitioner was allotted 30 hours per week PCW time in the past. The provider requested it again, and this triggered a review by the HMO performing what it calls a "personal needs assessment", i.e., the PCST analysis of the petitioner's personal care worker needs for assistance. That analysis established that the tool directed that the petitioner needed only 16.25 hours per week of assistance. It was corroborated via use of the Department's standard Personal Care Activity Time Allocation Table, which also arrived at 65 units of assistance were needed, i.e., 16.25 hours per week. See, Exhibit #4.

The Notice issued to the petitioner on March 15, 2022, stated the following as the reasons for the reduction from 30 hours per week:

Service has been changed based on a personal needs assessment (PNA), to see how much you can do for yourself, completed by an independent physical/occupational therapist or registered nurse. Based on the PNA you were found to be more independent with upper and lower body dressing, prosthetics (splints, braces, stockings) grooming, eating, mobility, and toileting. An additional 25% was added for PRN's (things done as needed.) You were receiving 120 units/week. The request was for 120 units/week. The changed services are now approved as PCW 65 units/week for a 6-month authorization starting 3/26/2022. Authorization number is OP2896466552.

See, Exhibit #4, attached Notice of Denial dated March 15, 2022.

Upon review at grievance, the HMO Grievance and Appeal Committee affirmed the awarded PCW service level of 16.25 hours per week.

The Department's Nurse Consultant, Kathleen Healy reviewed the HMO PCW allocation based upon the clinical record provided by the HMO at that time, after the appeal was filed, and determined on June 2, 2022, that the petitioner's clinical record had actually demonstrated that only 15.25 hours or 918.75 minutes per week, plus 48 units per 6 months of pro re nata time, was medically necessary to meet the established care needs of the petitioner.

As noted by Dr. Lyons, as quoted in Finding of Fact No. 17, above, the petitioner has produced a volume of recent and new clinical documents calling into question the exact nature of her lower extremity strength, flexion, and ambulation skills, as well as the new reports of lymphedema or possible lymphedema and definite symptoms of lower extremity swelling. There is also testimony about the possibility of neurological disorders and testing pending, with clinical documents establishing symptomology, but not etiology for neurological pains and knee flexion problems. See, Exhibit #5, from the petitioner, and Exhibit #4, from the agency, incorporating the petitioner's Exhibit #4 with agency review comments.

It is clear to me from this record that the petitioner has asserted new evidence not previously considered by the HMO and the Department's reviewing consultant that has arisen long after the PCW modification determination made in mid-March, 2022, and essentially affirmed by the HMO in mid-April, 2022. Then the petitioner appealed on May 2, 2022. Now, over two months later, she provides a dozen or more new clinical documents not previously provided to the HMO or the Department, and which it had not previously consider.

That is not how the hearing process to review medical service authorization works or was intended to work. A MA recipient makes a request for services, presents current documentation at the time of the requested services, the Department's agent reviews the evidence, and makes a determination. That occurred here. Based upon the evidence presented, and particularly the personal needs assessment originally performed in it appeared to the HMO appears to have been generally accurate and correct at the time of the decisions made by the HMO on the original request.

Based upon the foregoing evidence and record, I find that the preponderance of the evidence presented at the time of the HMO original decision (March 15, 2022) and at the time of the HMO Grievance Committee decision (April 14, 2022) established that the HMO had correctly determined on the extant evidence that modification to 65 units was required by the facts and MA rules for PCW coverage. Subsequently, the Department established further that the actual need was 61 units per week, plus 48 units of pro re nata services per six-month period. That ultimate determination (61 units per week) is sustained here, and the instant appeal is dismissed.

Nothing in this decision prevents the petitioner from again requesting that her PCW hours be increased by the HMO under new medical evidence that she has developed or is developing. In fact, the HMO states that it is reviewing her personal needs assessment at present as a result of the putative worsening of her condition that she asserts. But this evidence arose long after the decision made here by the HMO that was appealed. The petitioner would be well-advised to submit all new clinical evidence to her provider and she may have her provider again request a new determination of her personal care worker needs going forward.

### CONCLUSIONS OF LAW

- 1) The petitioner's HMO correctly modified the request for PCW time for petitioner to 65 units per week on March 15, 2022; and again on grievance decision on April 14, 2022 at the same level; the Department has reviewed that awarded amount and correctly reduced the allocation to 61 units per week; and the petitioner has not established by the preponderance of the evidence in this record that she required 120 units of PCW services at the time of the March 12, 2022, request by her provider.
- 2) Jurisdiction is not present for the Division to review evidence of a post-decision worsening of conditions arising after the two decisions described in Conclusion of Law No. 1, above; that part of the petitioner's appeal is dismissed as discussed in the penultimate paragraph of the DISCUSSION above.

**THEREFORE, it is**

**ORDERED**

That the petition for review 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, 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**

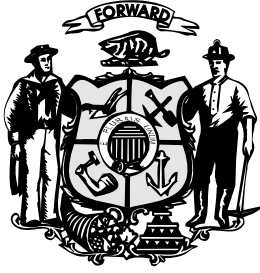
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 20th day of July, 2022



\s \_\_\_\_\_  
Kenneth D. Duren  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on July 20, 2022.

Division of Medicaid Services