



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: HMO - 206597

PRELIMINARY RECITALS

Pursuant to a petition filed on October 15, 2022, 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 7, 2022, by telephone.

The issue for determination is whether the HMO incorrectly modified the prior authorization request for personal care services by approving not the 26.25 hours requested but only 8.25 hours per week.

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: J. Ornelas (MHS Health)
Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. Petitioner is enrolled in BC+ HMO with MHS Health Wisconsin as her HMO. Petitioner has diagnosis of diabetes, hypertension, hyperlipidemia, chronic pain, recurrent chest pain, shortness of breath, and obesity.
3. Petitioner's care provider, Gracious Home Care Inc., sought by PA request approval for 26.25 hours per week of personal care worker ("PCW") services.
4. The HMO contracted with Med Group Home Health Care to perform an assessment of care needs using the personal care screening tool ("PCST") on July 17, 2022. The assessor spoke with petitioner and observed her performing some tasks to determine petitioner's level of independence.
5. By notice dated 9/1/22, the HMO approved 8.25 hours per week. Petitioner appealed the decision within the HMO.
6. On 10/7/22, after a grievance meeting and review by a physician the 8.25 hours was upheld by the HMO.
7. Petitioner appealed by request for hearing on 10/15/22.
8. On 11/4/22 the Department of Health Services nurse consultant issued a letter explaining that the department agrees with the HMO determination.

DISCUSSION

MA coverage of PCW services is described in the Wis. Adm. Code, §DHS 107.112. Covered 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. The Code also provides that, "No more than one-third of the time spent by a personal care worker may be in performing housekeeping activities." Wis. Adm. Code, § DHS 107.112(3)(e).

In determining the number of PCW hours to authorize, the OIG uses the standard above along with the general medical necessity standard found at Wis. Adm. Code, § DHS 101.03(96m). Essentially the medical necessity standard requires a service to be basic and necessary for treatment of an illness, not necessarily the best service possible, and not just for convenience. To determine the number of PCW hours to authorize the OIG 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 allots a specific amount of time in each area the recipient requires help, which the OIG's reviewer can then adjust to account for variables missing from the screening tool's calculations.

In the case of PCW services, MA pays only for medically-oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his place of residence in the community. Wis. Admin. Code § DHS 107.112(1)(a). Covered PCW services include only 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).

It is petitioner's burden to establish the necessity of the requested time. In this case, the HMO appeared with a representative and its medical director and provided a detailed presentation supporting its bases for the approved time. The HMO explained that it reviewed clinical records of visits as recently as June 2022. The HMO also contracted for an independent assessment which was conducted on-site with petitioner by a skilled home health RN using the personal care time allocation table. The documentation in the table was detailed with notes supporting the observations of the assessor. The witness from MHS also explained justifications for time allocations. The Department witness also explained that the Department reviewed the documentation and supported the 8.25 hours per week. The HMO noted that in the clinical notes from 3/31/22 the petitioner reported to her provider that she does not need assistance with activities of daily living but does need someone to help her with housekeeping, transportation, and laundry. This conflicts with other information in the documentation and creates confusion. The March 31st 2022 clinical note by Doctor Sala addresses petitioner's complaints regarding difficulty completing activities of daily living. In that note Doctor Sala states that the symptoms have been difficult to interpret, and he provides no specificity as to the difficulties described. Doctor Sala explains that in 2021 petitioner was referred to occupational therapy but did not comply with the recommendations in that evaluation.

I note that the petitioner argued at hearing and in some documentary evidence that the MHS contracted assessor caught her on a good day which resulted in an optimistic assessment. I further note that in the decision from petitioner's last appeal she made the same argument. That ALJ did offer petitioner some of the time that was not approved at that time. But, such an argument does not continue to hold water without actual evidence. I agree with the HMO that the time granted must be based on evidence which includes clinical records and assessments that can be explained in the record.

Petitioner, however, did not present anyone from her provider or the assessor who performed the assessment for Gracious Home Care. There was no rebuttal testimony from any caregiver, home health specialist, or other health care provider. This was quite harmful to petitioner's case as it appears that the content of the assessments were the basis for the difference of determination of needed time. That is, Gracious Home Care found that time was needed for items that the MHS screen found petitioner able to accomplish more independently. While petitioner undoubtedly feels that more time should be granted, there was no objective testimony from a person familiar with the PCST and related assessments. Gracious did not appear to explain its observations or argue why the MHS screen was wrong. Petitioner herself was unable to state with any specificity how much time is needed or otherwise adequately rebut the testimony of MHS. Again, it was petitioner's burden at the hearing to support the hours she sought as necessary. Petitioner and her provider simply failed to do so.

Finally, I note that petitioner submitted documentation from a clinical visit with Dr. Carneol which took place on 10/24/22. The documents were received at DHA on 10/28/22. That visit occurred after the HMO decision at issue in this case and the notes from October were not considered by the HMO. They are, therefore, not relevant to my determination of whether the HMO decision in October was correct. I note, however, that the physician notes merely indicate that they may be able to support such a request if petitioner undergoes a functional assessment with physical therapy. The physician notes that petitioner is

not willing to undergo such an assessment as she believes her condition makes her unable to do so. I find this document relevant in my decision in that it clearly shows that petitioner is unwilling to go forward with recommendations of her healthcare providers – she feels unable to undergo an assessment, for example – even when her provider clearly feels she is able and that it would be in her best interests. This raises significant doubts regarding her claims that she is unable to perform various tasks.

CONCLUSIONS OF LAW

The HMO did not err in its determination of 8.25 hour per week as the necessary and appropriate PCW time.

THEREFORE, it is

ORDERED

That this appeal 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, 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).

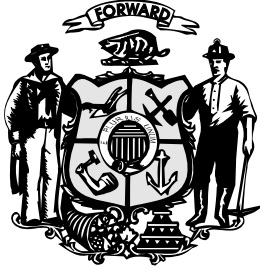
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 4th day of January, 2023



\s

John P. Tedesco
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 January 4, 2023.

Division of Medicaid Services