



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

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In the Matter of



**DECISION**  
Case #: MPA - 210282

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on September 17, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Department of Health Services, Division of Medicaid Services regarding Medical Assistance (MA), a hearing was held on November 16, 2023, by telephone. The hearing was first set for October 26, 2023 but rescheduled at Petitioner's request.

The issue for determination is whether Petitioner is entitled to Medical Assistance coverage of more than 88 units (i.e., 22 hours) per week of personal care 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

Written Submission By: Elizabeth Batz, Nurse Consultant  
Division of Medicaid Services  
PO Box 309  
Madison, WI 53701-0309

**ADMINISTRATIVE LAW JUDGE:**

Teresa A. Perez  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is an 89-year old resident of Marathon County who is eligible for Medical Assistance.
2. Petitioner is a frail elder whose medical diagnoses include: generalized weakness, degenerative joint disease, chronic back pain, gastrointestinal hemorrhage associated with duodenal ulcer, chronic kidney disease, stage III, /GI bleed with perforation, pulmonary embolism without acute cor pulmonale myopathy. Petitioner suffers from shortness of breath, pain in his back, hands, and knees, and blurry vision. Petitioner is at heightened risk of falling due to his weakness. Since July 2023, he has been incontinent.
3. Petitioner was hospitalized in June 2023 and in July 2023 at which time it was discovered that he had a gastrointestinal bleed resulting from a perforated ulcer and a pulmonary embolism. Petitioner's overall health and strength has significantly declined since then. As a result, he has needed more assistance with his activities of daily living.
4. Following Petitioner's discharge from the hospital, he moved from his son's house and into the home of his daughter. Petitioner's daughter and his daughter's spouse both work outside of their home but they work different shifts and so are able to ensure that someone is home with Petitioner at all times.
5. Petitioner requires assistance with bathing, dressing his upper and lower body, grooming, eating, mobility, toileting, transferring and for incidental tasks like preparing meals and cleaning.
6. Petitioner's daughter sits with Petitioner while he eats, hands him his utensils, and helps guide his hand. He requires this assistance due to his overall extreme weakness as well as his poor vision.
7. Petitioner's daughter retrieves her father's clothing for him and assists with both lower and upper body dressing. Due to his weakness, she has to slip his arms into the sleeves of his shirt and then he is able to help button it.
8. On August 16, 2023, [REDACTED] ("the provider") completed a Personal Care Screening Tool (PCST) which estimated that Petitioner requires 36.5 hours of personal care worker (PCW) assistance each week.
9. On August 22, 2023, a physician signed a plan of care indicating that Petitioner requires 35 hours per day of PCW seven days per week.
10. On August 23, 2023 and August 25, 2023, the provider submitted a prior authorization request on Petitioner's behalf for Medical Assistance coverage of 35 hours (146 units) of PCW assistance each week for 53 weeks beginning August 27, 2023 and 24 hours (96 units) of PRN PCW time (i.e., time to be used on an as needed basis throughout the PA coverage period). The PA also requested 10.5 hours (42 units) of travel time per week.
11. On September 14, 2023, the Department of Health Services ("the Department") approved 22 hours of PCW assistance per week, 24 hours of PCW to be used on an as needed basis during the authorization period for "exacerbation of medical conditions and/or to attend medical appointments to assist with ADLs", and 7 hours (28 units) of travel time effective August 27, 2023.
12. On September 17, 2023, Petitioner filed an appeal seeking the 35 hours of PCW per week requested.

## DISCUSSION

State Medicaid rules define personal care (PC) services 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.” Wis. Admin. Code §DHS 107.112(1)(a). Like all medical assistance services, PC services must be medically necessary and cost effective. Wis. Admin. Code §DHS 107.02(3)(e)1 and 3. The rules further provide that PC services must be provided upon written orders of a physician. *Id.* 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 also 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 including cutting food; and food purchasing. For individuals who live alone, the maximum amount of time that may be allowed for such incidental cares is 1/3 of the time authorized for direct care with activities of daily living (ADLs) and medically oriented tasks (MOTs) and for individuals who live with others, that amount is decreased to ¼ of the time authorized for care with ADLs and MOTs. See *On-line Provider Handbook*, topic 3167.

To determine the number of PCW hours an individual is entitled to receive authorization for, providers are required by the Department to use the Personal Care Screening Tool (PCST). The PCST is intended to provide for consistency in Departmental authorizations of PC services. The PCST tool allots a specific amount of time for each activity with which the recipient requires help. The Department can adjust PC amounts directed by the PCST to account for variables missing from the screening tool’s calculations.

The Department here authorized all care requested by the provider on Petitioner’s behalf for assistance with bathing, lower body dressing, grooming, mobility, and transferring. As detailed in the Department’s written response to Petitioner’s appeal, the Department authorized some but not all of the time requested by the provider for toileting and incidental tasks and denied time requested for assistance with eating and upper body dressing.

## UPPER BODY DRESSING

The provider requested PCW time with one episode of upper body dressing. The Department denied that request. However, at hearing, Petitioner's daughter offered detailed, credible testimony regarding the manner in which she assists her father to put a shirt on; specifically, that she must help him place his arms in the sleeves of his shirt because of his extreme weakness and that he then buttons his own shirt. The medical documentation regarding his ongoing intestinal bleeding overall frailty are consistent with her testimony. I thus find that Petitioner needs "partial physical assistance from another person to dress the upper body" and that 70 minutes per week of assistance with upper body dressing is medically necessary.

## EATING

The provider indicated in the PCST submitted with the PA request that Petitioner requires assistance with eating three times per day. The *PCST Completion Instructions* specify that "eating" means "the ability to use conventional or adaptive utensils to ingest meals by mouth." At hearing, Petitioner's daughter explained that due to her father's extreme weakness and his blurry vision, she must assist him at mealtime by handing him his utensil, by guiding his hand to his food, and by assisting him in lifting his utensil to his mouth. I found her detailed testimony to be credible and consistent with the medical records' description of Petitioner's frailty and poor health.

I thus find that Petitioner needs "partial physical feeding from another person" for three meals a day. The *PCST Table* allows 60 minutes per day for that level and frequency of assistance. I thus find that 420 minutes per week of assistance with upper body dressing is medically necessary.

## TOILETING

The provider requested authorization for 350 minutes per week of PCW services to assist Petitioner with five episodes of toileting per day. In its written response to Petitioner's appeal, the Department argued that a PC worker comes to Petitioner's house three times per day, that each of those visits is less than 70 minutes, and that the "standard of practice is to assist with toileting every two hours." See *Department's October 2, 2023 appeal response letter*, p. 6. The Department thus authorized only three episodes of toileting. The Department provided no citation for the standard of practice referenced in its written response.

Petitioner's daughter who resides with him and who is one of his primary caregivers appeared at hearing and testified credibly regarding the frequency of assistance that her father requires with toileting. She explained that due to his extreme weakness, they sometimes do not get to the bathroom on time and that he then needs to be changed. She further testified that he is incontinent of both urine and bowel and indicated that assisting him with his toileting is one of the more arduous and time consuming aspects of his care.

Based on the totality of the credible evidence in the hearing record, I find that Petitioner has established that he requires 350 minutes of PCW assistance per week for assistance with toileting.

## INCIDENTAL CARES

Petitioner lives with others and needs assistance with cooking, cleaning, laundry, etc. (e.g., “incidental cares”). As set forth above, 1/4 of the time approved for personal care assistance with direct cares (e.g., grooming, toileting, dressing, bathing) may be authorized as PCW time for incidental cares. Because the record here demonstrates that he requires 1,680 minutes of PCW time for direct cares, he will be authorized to receive 420 minutes of PCW time for incidental cares. This amounts to a total of 2, 100 minutes per week (i.e., 35 hours per week).

**I note to the petitioner that the requesting provider will not receive a copy of this Decision. In order to have the additional personal care assistance authorized by this decision approved, the petitioner must provide a copy of this Decision to [REDACTED]. The provider must then submit a new prior authorization request along with a copy of this decision to receive the approved coverage.**

## CONCLUSIONS OF LAW

A preponderance of the evidence in the record established that Petitioner requires 35 per week of personal care services.

**THEREFORE, it is**

**ORDERED**

That [REDACTED] is hereby authorized to provide the petitioner with 35 hours of personal care services per week. **The provider must submit its claim, along with a copy of this Decision and a new prior authorization request, to ForwardHealth for payment.**

## 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.

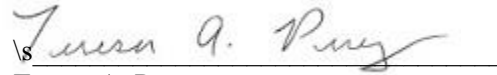
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

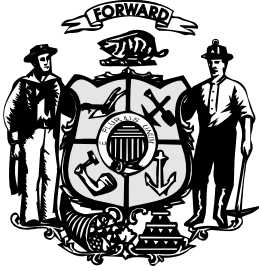
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 5th day of January, 2024

A handwritten signature in cursive script, appearing to read "Teresa A. Perez", is written over a horizontal line.

Teresa A. Perez  
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 5, 2024.

Division of Medicaid Services