



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]

DECISION
Case #: MPA - 203721

PRELIMINARY RECITALS

Pursuant to a petition filed on November 12, 2021, 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 December 22, 2021, by telephone.

The issue for determination is whether the Division of Medicaid Services correctly modified the petitioner's prior authorization request for personal care worker services from 29.75 hours per week to 19 hours per week.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]

Respondent:

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

By: [Redacted], R.N. Nurse Consultant
Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 66-year-old resident of Milwaukee County. She testified under oath at the fair hearing held on December 22, 2021, that she lives alone. She is certified as eligible for Medical Assistance.

2. The petitioner's primary diagnosis is a history of fibromyalgia. She also has Diabetes Mellitus, Congestive Heart Failure, a history of a cerebral infarction, hypertension, asthma, migraines and she broke her left hip on January 30, 2021. The petitioner had the left hip repaired (ORIF- Open Reduction and Internal Fixation) in February of 2021 and has "...undergone extensive Physical Therapy and Occupational Therapy since the surgery." She has a history of a fractured foot back in 1993. She also has cervical spondylosis. She has a longstanding history of reported neck pain, and she has had multiple cervical epidural steroid injections at C6-C7 in at least the third quarter of 2021. She consistently self-reported her neck pain in clinical evaluations in 2020-21 in the range of 8/10 to 10/10. She also takes pain medications for this condition. See, Summary Letter of RN [REDACTED] dated December 16, 2021, at Attachments E, L, K, M, and N; and see, Exhibit P-1 (petitioner's fax transmission of December 19, 2021.) She also sometimes uses a walker to ambulate, while overall ambulation improved over the summer of 2021. Ibid, at Attachments D - H.
3. The petitioner takes at least the following medications: aspirin (81 mg); atorvastatin; Combivent Respimet; Corge; DULoxetine; ergocalciferol; ferrous sulfate; HumuLIN; Lasix; lisinopril; Lyrica; ProAir HFA; spironalactone; SUMatriptan; Topamax; warfarin; oxycodone; and Eliquis. See, Summary Letter of RN [REDACTED] dated December 16, 2021, at Attachments L, K, M and N.
4. The petitioner had a history of falls in at least 2021. See, Summary Letter of RN [REDACTED] dated December 16, 2021, at Attachment E.
5. On July 22, 2021, the petitioner's home health care provider agency ("[REDACTED]") submitted a Prior Authorization Request to the Department's Division of Medical Services seeking authorization of MA coverage for 29.75 hours per week of personal care worker services to the petitioner for 54 weeks, beginning on August 18, 2021. See, Summary Letter of RN [REDACTED] dated December 16, 2021, Attachment A.
6. Along with the PA Request, the provider submitted a Prior Authorization Request Form, a Physician's Order/Plan of Care document, and clinical documents from physical therapist(s) about visits dated June 3, 2021, June 22, 2021, and July 14, 2021; and clinical documents from an occupational therapist about visits dated June 24, 2021 and July 21, 2021. See, Summary Letter of RN [REDACTED] dated December 16, 2021, Attachments A-H.
7. On August 24, 2021, the DMS' Nursing Consultant requested additional information from the petitioner and her clinical providers. A case review letter was sent by the Nurse Consultant requesting the most current Primary Care Provider notes and a Personal Care Addendum detailing the PCW schedule. The Consultant also asked for clarification regarding the petitioner's living situation (PCST states [REDACTED] lives alone while PT notes state [REDACTED] lives with her son). It was also asked that if the petitioner/recipient lives alone, explain how she manages mobility, toileting, and transferring when the PCW is gone from her home. See, Summary Letter of RN [REDACTED] dated December 16, 2021, Attachment Exhibit I.
8. On or about September 14, 2021, the petitioner's provider submitted additional documentation. This consisted of a Personal Care Addendum dated August 26, 2021, that stated that the petitioner lives with her caregiver (Attachment J); three telephonic consult notes dated October 22, 2020, November 20, 2020, and January 12, 2021 (Attachments K, L and M); plus a clinical note from a face-to-face visit on April 14, 2021 (Attachment N). See, Summary Letter of RN [REDACTED] dated December 16, 2021, Attachments J - N.
9. On October 14, 2021, the Division of Medicaid Services issued a Notice letter to the petitioner informing her that her PA Request for PCW services had been approved as modified at a level of 19

hours of PCW services per week. See, Summary Letter of RN [REDACTED] dated December 16, 2021, Attachment O.

10. On November 16, 2021, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the modification decision made by the DMS on October 14, 2021, and again reasserting that she required 29.75 hours of PCW services per week as originally requested. See, Summary Letter of RN [REDACTED] dated December 16, 2021, Attachment P; and see, the file for DHA Case No. MPA 203721.
11. The petitioner's personal care worker is her adult son.
12. The petitioner requires occasional help with wiping after toileting; she otherwise toilets with independence with a raised seat. See, Summary Letter of RN [REDACTED] dated December 16, 2021, Attachment H, at p. 2 of 3
13. The petitioner requires about 70 minutes per week of upper body dressing and 70 minutes per week of lower body dressing assistance due to cervical limitations, neck pain, a recent hip fracture, and a recent history of falls.

DISCUSSION

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(1)(b).

Personal care workers can spend no more than one-third of their time performing housekeeping activities, or one-fourth when the recipient lives with family. Like all medical assistance services, PCW services must be medically necessary, appropriate, and cost effective. Wis. Admin. Code, §§DHS 107.02(3)(e)1, 2, and 3. The petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

To determine the numbers of PCW hours, providers are required by the DMS to use the Personal Care Screening Tool (PCST), a tool meant 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 DMS's reviewer can then adjust to account for variables missing from the screening tool's calculations. The provider originally sought a total of 29.75 hours (or 119 units per week.)

In this case, the DMS approved all requested time in the PA for bathing, grooming, mobility, transfers, and medically oriented tasks (skin cares), which totaled 14 hours per week. The DMS denied all time requested for upper body dressing (140 mins.) and toileting (210 mins.) The DMS granted 70 minutes of the requested 140 minutes for lower body dressing (i.e., it denied 70 mins. per week.) Finally, the DMS granted incidental time at the 25% (here, 227.50 mins. per week) rate for a person who lives with others, and not the 33% (here, 443.33 mins. per week) incidentals rate for a person living alone. When the lower body dressing time and the 25% incidentals time were added to the 14 hours of actual service, total PCW hours approved on modification was found to total 19 hours per week (or 76 units).

When questioned by the administrative law judge at the hearing, the petitioner was adamant that she does not live with any other person, and specifically that her son/caregiver does not live with her. That testimony is clear and unequivocal and rebutted only by a mixed record from DMS that providers have reported in the past that her caregiver does live with her and reports that he does not. I found her credible on that limited point of fact in question.

As to the questions of whether she can dress her upper body, dress her upper body, or toilet unassisted, her answers were decidedly equivocating. To all three questions, she rather formulaically offered up the repeated response, "Some of the time I can, and some of the time I can't." She references shoulder and neck pain as the reason when she cannot perform these tasks. She admits that she can do most of her own toileting but sometimes needs assist and with wiping.

As to her toileting skills, the clinical notes from her occupational therapist indicated that she was provided with a raised toilet seat and exercises and training to increase activities of daily living safety and independence in activities including toileting. See, Summary Letter of RN [REDACTED] dated December 16, 2021, Attachment H, at p. 2 of 3. There is no clinical indication that this modification otherwise failed to address her toileting needs. She has not established that she needs anything near 30 minutes per day of personal care worker hands on assistance with toileting in any event.

Of note, DMS granted 70 minutes of the 140 minutes requested for lower body dressing. Based upon the petitioner's vague but marginally effective testimony, and her age and clearly established medical conditions of cervical pain with steroid injections, fibromyalgia and a history of past hip fracture, I will approve 70 minutes per week for upper dressing too, but I will not disturb the authorization for the lower body. This evidence makes it appear to be sufficient. In addition, I will not allocate any additional time for toileting. There does not seem to be clinical evidence in support of that level of assistance with toileting. Finally, this means that actual cares are approved at 15 and 15 minutes (approximately). As to the incidentals, I am persuaded she lives alone on this record, and is entitled to an incidentals add-on at the 33% rate, not the 25% rate. This then means approximately 300 minutes per week of incidental time (60 minutes x 15 hours = 900 mins. + 15 minutes = 915. 915 mins. x 33%= 301.95 minutes, rounded to 300 mins. here.) That results in 15 hours, 15 minutes of actual cares plus 5 hours of incidentals, or a total to be authorized of 20 hours, and 15 minutes. This is 81 units (15-minute time packets) per week.

Based upon the evidence presented, the petitioner has demonstrated that DMS's modification to the PA is partially incorrect. I agree that the full PA Request for 29.75 hours per week of PCW services is not supported. However, the modification determination also erred. I will remand the matter to the DMS and direct it to approved 20 hours and 15 minutes per week of PCW services.

Nothing prevents the petitioner from filing a new Prior Authorization Request in the future to establish with clinical documentation that she requires more assistance with dressing, toileting and incidentals. She has failed to do so on this record.

I also note to the petitioner that her provider will not receive a copy of this Decision. In order to have the services approved at this 20.25 hour per week level, the petitioner must provide a copy of this Decision to her Milwaukee-based home health care provider, known as [REDACTED]. The provider must then submit a *new* Prior Authorization Request to receive the herein approved coverage, together with a copy of this Decision.

CONCLUSIONS OF LAW

That the petitioner has established by the preponderance of the evidence in this record that she is eligible to receive 20.25 hours per week of PCW services reimbursed by the Medical Assistance Program under prior authorization, not the requested 29.75 hours per week.

THEREFORE, it is

ORDERED

That the petitioner is to be reimbursed for the cost of 20.25 hours per week of PCW services hours under PA/RF 5212030147 for 53 weeks; and further that *her provider*, [REDACTED] (of Milwaukee, Wisconsin), must submit a *new* PA Request for services at 20.25 hours per week, together with a copy of this Decision, and thereafter, ForwardHealth is to pay all conforming claims thereunder.

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.

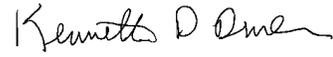
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

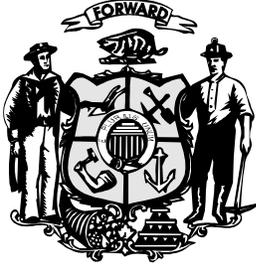
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 19th day of January, 2022



\s _____
Kenneth D. Duren
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 19, 2022.

Division of Medicaid Services