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

In the Matter of

██████████
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██████████████████

DECISION ON REHEARING
Case #: MPA - 206520

PRELIMINARY RECITALS

Pursuant to a petition filed on October 7, 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 (DMS) regarding Medical Assistance (MA), a hearing was held on November 29, 2022, by telephone. On December 16, 2022, a decision was issued. On January 3, 2023, the Petitioner’s representative filed a rehearing request. On January 5, 2023 and January 13, 2023, the Petitioner’s representative submitted additional evidence to support the rehearing request. On January 13, 2023, the rehearing request was granted. The additional evidence was forwarded to the DMS for review and response. On January 27, 2023, the DMS submitted a response. On January 27, 2023, the response was forwarded to the Petitioner’s representative. The record was held open until February 3, 2023 for additional evidence and response. No additional evidence was submitted, and the record was closed.

The issue for determination is whether the DMS correctly modified the Petitioner’s PA request for PCW services.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Petitioner's Representative:

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

Respondent:

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

By: Kathleen Healy
Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:
Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. She is 8 years old and lives with her family. Her primary diagnoses include Down’s Syndrome, speech delays, and urinary and fecal incontinence.
2. On June 9, 2022, a Personal Care Screening Tool (PCST) was completed for the Petitioner by her provider, TLC Personal Care. The screener determined the Petitioner has the following need for assistance:
 - Bathing – Level E
 - Dressing – Level E
 - Grooming – Level F
 - Eating – Level G
 - Mobility – Level C – Petitioner has altered gait and requires supervision to ensure safety. Petitioner also has difficulty ambulating with shoes on.
 - Toileting/incontinence care – Levels D/E – Petitioner requires total assistance for toileting 3x/day and incontinence care 5x/day
 - Transferring – Level C – Petitioner requires assistance on/off furniture
 - Behaviors – Petitioner has Down’s Syndrome, sensitivity to tactile stimulation. She is often resistive to cares.

The PCST allocated 45.5 hours/week of PCW services.
3. On July 12, 2022, TLC submitted a PA request for 45.5 hours/week of PCW services for the Petitioner. The proposed PCW schedule was 8 – 11 a.m. and 5 – 8:30 p.m. 7 days/week.
4. On September 22, 2022, the DMS approved 24.75 hours/week of PCW services for the Petitioner. The DMS approved the time requested for assistance with bathing, dressing, grooming, and eating. The DMS modified the time requested for assistance with toileting. The DMS denied the time requested for assistance with mobility, transferring, and behaviors.
5. On October 7, 2022, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals. A hearing was held on November 29, 2022.
6. On December 16, 2022, a decision was issued which concluded that the DMS had correctly modified the Petitioner’s PA request.
7. On January 3, 2023, the Petitioner’s representative filed a rehearing request. Additional evidence was submitted on January 5, 2023 and January 13, 2023 to support the rehearing request. The additional evidence was submitted to DMS for its review and response. On January 27, 2023, the DMS responded that it was approving the time requested for assistance with mobility and transferring. It also increased the time for services incidental to tasks based on total time approved for all activities of daily living. The DMS approved 128 units/week (32.08 hours/week) of PCW services.

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(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 and cost effective. Wis. Admin. Code, §DHS 107.02(3)(e)1 and 3.

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’ reviewer can then adjust to account for variables missing from the screening tool’s calculations.

In this case, the DMS approved the time requested for assistance with bathing, dressing, grooming, mobility, eating, and transferring. The DMS modified the time requested for toileting/incontinence care. The DMS denied the time requested for behaviors.

Toileting/incontinence care

Regarding toileting/incontinence care, TLC requested assistance with toileting 3x/day and assistance with incontinence care 5x/day. The DMS agrees that the Petitioner requires assistance with toileting/incontinence care and approved time for assistance 1x/hour based on PCW assistance of 24.75 hours/week.

At the hearing, the Petitioner’s mother testified that the Petitioner requires assistance with all aspects of toileting and incontinence care. She noted that the Petitioner is unable to communicate her needs and wants so she has frequent incontinence.

The DMS has increased the time allowed for PCW assistance. Therefore, I conclude the Petitioner is eligible for additional assistance with toileting. Based on 32 hours/week approved for ADL assistance, I

conclude the Petitioner is eligible to receive time for assistance with toileting/incontinence care of 5x/day, 15 minutes/episode or 525 minutes/week.

Behaviors

Additional time was requested based on Petitioner's behaviors. The DMS originally denied the time requested because the physician's orders/plan of care did not include an order for additional time due to behaviors. The Petitioner's mother testified extensively regarding the Petitioner's aggressive and resistive behavior during cares. As part of her rehearing request, the Petitioner's mother submitted a medical record that indicates the Petitioner is combative and aggressive. She also submitted a revised POC which includes the following: "PCW will require increased time accommodation to complete ADL tasks listed above with patient due to her behaviors related to her diagnoses of down syndrome and cognitive and developmental delays." The DMS indicated it could not approve the time requested for behaviors due to not being able to read the physician's signature or certification dates.

While the physician's copy that I received is difficult to read, I can ascertain that the certification dates are 7/15/22 – 7/14/23 (the same as the original POC) and the signature is that of Dr. Rioga (the Petitioner's physician). **I am requesting that the Petitioner's mother submit a hard copy of the revised physician's order to the DMS so that it has a legible copy of the order for its files.**

The PCST Instructions state that additional PCW time can be allocated if a member exhibits behavior that interferes with the PCW's assistance with ADLs and makes the performance of ADLs more time-consuming. The Petitioner has submitted sufficient evidence that warrants approval of time for Petitioner's behaviors. The Petitioner is eligible to receive an additional 25% increase in assistance time for behaviors.

In summary, the DMS approved a total of 1540 minutes/week for ADLs. Based on the evidence submitted, I conclude the Petitioner is eligible for a total of 1715 minutes/week for ADLs. In addition, the Petitioner is eligible for 428.75 minutes/week for services incidental to tasks and 428.75 minutes/week for behaviors. Petitioner is eligible for total assistance of 2582.5 minutes/week or 43 hours/week of PCW assistance.

Note to Petitioner: TLC Personal Care agency will not receive a copy of this decision. In order to receive the additional services, you must provide a copy of this decision to TLC. TLC must then re-submit the PA request along with a copy of this decision to ForwardHealth and the services will be approved.

CONCLUSIONS OF LAW

The Petitioner is eligible for 43 hours/week of PCW assistance.

THEREFORE, it is

ORDERED

That the Petitioner's provider, TLC Personal Care agency, can provide PCW services of 43 hours/week to the Petitioner. The Petitioner's provider TLC should re-submit the PA request along with a copy of this decision to ForwardHealth and ForwardHealth shall approve the request.

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, 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.

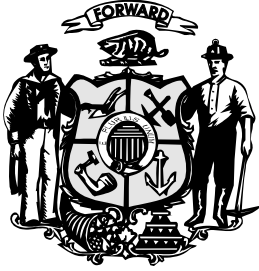
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 7th day of February, 2023

\s _____
Debra Bursinger
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 February 7, 2023.

Division of Medicaid Services

