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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████

DECISION

Case #: MPA - 206485

PRELIMINARY RECITALS

Pursuant to a petition filed on October 4, 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 regarding Medical Assistance (MA), a hearing was held on February 15, 2023, by telephone. Hearings has been initially set for December 1, 2022, then December 7, 2022, then January 19, 2023, and then ultimately rescheduled and held on February 15, 2023. Each reschedule had been per Petitioner's request due to either not having received the Department's exhibits or due to scheduling issues.

The issue for determination is whether Petitioner is eligible for Medical Assistance of more than 74 units per week of personal care worker services.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████

Petitioner's Representative:

Attorney Matthew V. Hayes
Senior Law, Legal Action of WI
633 West Wisconsin Ave. Suite 2000
Milwaukee, WI 53203

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703
By: Kathleen Healy, RN (Via Written Submission Only)
Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Nicole Bjork
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County who lives alone.
2. Petitioner's diagnoses include chronic pain, low back pain, bilateral primary osteoarthritis, pain in the right shoulder, and osteoarthritis of the knee.
3. On June 2, 2022, [REDACTED] ("the provider") completed a Personal Care Screening Tool (PCST) which estimated that Petitioner requires 131 units per week of personal care worker (PCW) assistance.
4. On June 28, 2022, the provider requested 126 units per week for 53 weeks of PCW services on Petitioner's behalf. Petitioner's medical records, dated June 3, 2022, were also submitted.
5. On July 6, 2022, the Department sent a notice to Petitioner informing her that it had approved the prior authorization request with modifications to 74 units per week for 53 weeks, effective August 12, 2022. Travel time was also authorized as requested. The Department had approved all the requested time for bathing, lower body dressing, brace assistance, and grooming. The Department denied any time for upper body dressing or mobility. The Department had further reduced time for toileting (140 min/week approved of 280 minutes requested), incontinence care (105 min/week approved of 210 minutes requested), and transferring (30 min/week approved of 210 minutes requested).
6. Petitioner filed a timely appeal. At hearing, Petitioner did not dispute any of the allocated time except for the areas of upper body dressing and mobility.

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; food purchasing; and meal service. 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 and medically oriented tasks. 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, brace assistance, and grooming. The Department authorized 140 minutes per week for assistance with toileting rather than the requested 280 minutes requested. The Department authorized 105 minutes per week for incontinence care rather than the requested 210 minutes per week. The Department further authorized 30 minutes per week for assistance with transferring rather than the requested 210 minutes per week. Petitioner did not dispute any of those modifications.

Finally, the Department denied all time requested for assistance with upper body dressing or mobility assistance. Petitioner disputes these denials.

The Department noted that in May 2022, a long term care functional screener noted that Petitioner was independent with dressing her upper body while seated. The Department further noted that a June 3, 2022 medical record submitted with Petitioner’s PA request stated in part. “The patient’s lower back pain is secondary to degenerative osteoarthritis of the lumbo-sacrum...The patient rates the pain at 8/10 without the medication. After taking the medication, the patient’s (sic) rates the pain at 3/10...” Exhibit 2. Thus, the Department concluded that, absent corroborating clinical documentation, it could not authorize time for upper body dressing.

However, the provider noted in the PA that a PCW was required to assist Petitioner with upper body dressing each morning due to her chronic pain. Additionally, the Department’s assessment disregards Petitioner’s plan of care, signed by her physician. The plan of care notes that Petitioner is unable to lift her arms above her shoulders without pain and requires assistance with applying her shirt. This same language appears in Petitioner’s personal care addendum. Exhibit 3, Attachments 12 and 14. Further, Petitioner noted that the Department acknowledged that pain medication significantly affects Petitioner’s pain level and that no mention was made regarding whether Petitioner’s pain medication was at full effect by the time the LTCFS was completed. Based on the documentation submitted, especially from her physician, Petitioner is in clear need of assistance with dressing, I find that assistance with upper body dressing is medically necessary and that it should be authorized.

With respect to mobility, the Department referenced the same LTCFS completed in May 2022. The LTCFS specifically states that Petitioner, “needs partial assistance with mobility in the home.” The LTCFS further noted that Petitioner uses a cane often combining it with using walls/furniture for support daily due to difficulties with her balance due to pain in her knees and back caused by osteoarthritis and chronic back pain. The LTCFS noted that Petitioner would benefit from the support of another person if she was not able to use the walls/furniture for support. Petitioner had not been noted to have experienced

any falls within the past year. The Department seemed to construe the above to mean that Petitioner required zero assistance with mobility since she can “use the walls/furniture.” The Department also noted that Petitioner’s medical records from June 3, 2022 state that Petitioner ambulates with a cane. The Department is construing that to mean that Petitioner doesn’t require hands on assistance since that is not specifically specified. The Department further noted that Petitioner lives alone and therefore, must be capable of ambulating without anyone assisting her.

In response, Petitioner noted that she does, in fact, have a history of falls, as detailed in her medical records. However, she did not have any falls within the last year, in part due to the fact that she was receiving assistance with her mobility by a PCW. Further, Petitioner noted that while she is able to get by using the walls/furniture when no one is present to assist her, using the walls/furniture is not a safe or effective alternative to hands on assistance.

Based on the totality of the credible evidence in the hearing record, I find that Petitioner has established that she requires 70 minutes per week of assistance with upper body dressing and 140 minutes per week of assistance with mobility.

Petitioner established that she lives alone. She may therefore receive personal care to assist with incidental cares (e.g., housekeeping and meal preparation) in amount equal to 1/3 of the time approved for personal care assistance with direct cares (e.g., grooming, toileting, dressing, bathing). Because the record here demonstrates that she requires 1045 minutes of PCW time for direct cares, she will be authorized to receive 348.33 minutes of PCW time for incidental cares. This amounts to a total of 1393.33 minutes per week.

I note to 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, Petitioner must provide a copy of this Decision to [REDACTED]. The provider must then submit a new prior authorization request to receive the approved coverage.

CONCLUSIONS OF LAW

A preponderance of the evidence in the record established that Petitioner requires 1393.33 minutes per week of personal care services effective August 12, 2022.

THEREFORE, it is

ORDERED

That [REDACTED] is hereby authorized to provide Petitioner with 1393.33 minutes of personal care services per week. [REDACTED] 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 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.

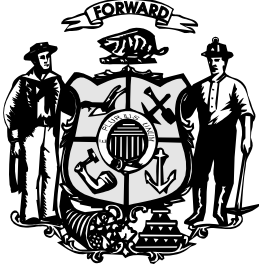
APPEAL TO COURT

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 1st day of March, 2023

\s _____
Nicole Bjork
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 1, 2023.

Division of Medicaid Services
Attorney Matthew Hayes