



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Director

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

B.F.

PETITIONER,

v.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 01507-15

UNITED HEALTHCARE,

RESPONDENT.

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence, the contents of the OAL case file, and the exceptions to the Initial Decision filed by both parties. Procedurally, the time period for the Agency Head to render a Final Agency Decision is November 3, 2016 pursuant to an Order of Extension.

Based upon my review of the record, I hereby MODIFY the Initial Decision affirming Respondent's reduction of Petitioner's Personal Care Assistant ("PCA") services from 35 to 20 hours per week. For the reasons which follow, I find that a reassessment should be performed.

PCA services are non-emergency, health related tasks to help individuals with activities of daily living and with household duties essential to the individual's health and comfort, such as bathing, dressing, meal preparation and light housekeeping. The decision regarding the appropriate number of hours is based on the tasks necessary to meet the specific needs of the individual and the hours necessary to complete those tasks.

Petitioner was initially approved for 35 hours of weekly PCA services based on an assessment performed under the Global Options waiver program.¹ As noted in prior Final Agency Decisions, a new MCO that inherited a client that was afforded a certain amount of hours is not required to explain "how or why" the client was given this amount of services. Thus, in this case, United does not have the burden to disprove the Global Options assessment. Unquestionably, the client should be provided with the number of hours that are medically necessary. However, if too many hours were awarded in error, such an error should not be continued simply because that was the amount of hours awarded in the past.

I am not persuaded by Petitioner's argument that United Healthcare must continue to provide the same amount of PCA hours given in a prior assessment if there has been no change in the Petitioner's medical condition. In arguing that there must be an improvement in the client's condition in order to reduce services, Petitioner relies on the unpublished Appellate Division decision, D.W. v. Division of Med. Assistance & Health Servs., 2014 N.J. Super. Unpub. LEXIS 2891 (App. Div. Dec. 15, 2014), a case

¹ Beginning July 1, 2014, participants in the Global Options Waiver, which is now encompassed by the Comprehensive Medicaid Waiver, were enrolled in the Managed Long Term Services and Supports (MLTSS) program through their current Medicaid managed care organization (MCO).

factually distinct from this one. The Final Agency Decision in D.W. reversed the recommended decision of the Administrative Law Judge and affirmed the reduction of PCA services from 40 hours to 25 hours per week. By opinion dated December 15, 2014, the Appellate Division vacated that decision and remanded the matter to the agency for reconsideration of the reduction in hours in light of D.W.'s deteriorating medical condition. The Final Agency Decision on Remand affirmed the reduction from 40 to 25 hours of weekly PCA services stating that the reduction of services was warranted and was supported by the fact that Petitioner was provided with funding through the Personal Preference Program for 40 hours of PCA services per week. Nevertheless, Petitioner structured her budget and chose to employ an aide with a higher hourly rate such that she receives only 30 hours of assistance per week. In other words, because the personal care aide selected by D.W. received a higher hourly wage than the amount upon which the 2009 cash grant was based, D.W. had actually been receiving 30 hours, rather than 40 hours, of weekly PCA services. For this reason and based on the results of two separate assessments of D.W.'s current condition and care needs, the prior Director of DMAHS found ample evidence in the record to justify the reduction in hours. D.W. appealed the Final Agency Decision, but the parties entered into a Stipulation of Dismissal after D.W. was reassessed and approved for 40 hours of services following a fall and subsequent hospitalization and was no longer attending medical daycare.

If the necessary personal care and household tasks can be accomplished within 20 hours per week, any additional hours would only be used for supervision or companionship which is not an authorized use of the service. See N.J.A.C. 10:60-

3.8(c). This would be contrary to the purpose of the PCA program, which is intended to provide medically necessary assistance with specific health related tasks.

Moreover, as noted by the ALJ, once PCA services are authorized, a nursing reassessment is performed every six months or more frequently if warranted, to reevaluate the individual's need for continued care. N.J.A.C. 10:60-3.5(a)3. Indeed, in a recent unpublished opinion, the Appellate Division upheld the termination of PCA services, noting that a reassessment is required at least once every six months to evaluate an individual's need for continued PCA services. As a result, the Appellate Court found that "an individual who has received approval for eligible services is not thereby entitled to rely ad infinitum on the initial approval and remains subject to . . . reevaluation at least once every six months". J.R. v. Div. of Med. Assist. & Health Servs. and Div. of Disability Servs., No. A-0648-14 (App. Div. April 18, 2016). (Op. at 9)

In this case, when B.F. became a client of United Healthcare, it conducted a reassessment of her PCA needs. In conducting the new assessment, United's nurse was aware of B.F.'s current medical conditions and needs and what tasks are necessary to meet her specific needs. The amount of time necessary to complete those tasks is included in the PCA assessment tool and in the ultimate recommendation of 20 PCA hours per week.²

The problem I have with United's determination in this case is that the nurse who performed the assessment did not testify at the hearing. As a result, Petitioner was unable to question her about her findings and scoring in the assessment tool. For this reason, I am unable to uphold the reduction in services and find that a new assessment

² The 20 hours includes additional hours granted through the discretionary authority of United's Medical Director.

is warranted. Should Petitioner disagree with the results of this assessment, she may request another fair hearing at that point.

THEREFORE, it is on this ^{13th} day of October 2016,

ORDERED:

That United Healthcare perform a reassessment. Petitioner's services shall be continued at 35 hours per week pending the reassessment.



Meghan Davey, Director
Division of Medical Assistance
and Health Services