

follow, I will allow the additional time awarded by the ALJ as well as additional time for medication administration and taking D.S. to medical appointments.

In reaching this decision, I accept the ALJ's fact-findings, which are based, in part, upon her assessment of the witnesses who testified at the administrative hearing. The fact-finder's assessment of the credibility of witnesses is entitled to deference by the reviewing agency head. Clowes v. Terminix, 109 N.J. 575 (1988).

In general, PCA hours are offered to New Jersey Medicaid recipients who are experiencing some functional impairment and are in need of a personal care assistant to help with some Activities of Daily Living (ADLs). See N.J.A.C. 10:60-3.1. The decision regarding the appropriate number of hours is based on the tasks necessary to meet the specific needs of the individual and the time necessary to complete those tasks.

I am not persuaded by Petitioner's argument in exceptions that he was deprived of due process by the admission of the August 8, 2016 assessment because Horizon did not provide notice of the results of the assessment prior to the August 23, 2016 hearing date. Petitioner's request for a fair hearing was based on an assessment performed by Respondent on February 4, 2016 reducing Petitioner's PCA hours from 25 to 15. This matter was transmitted to OAL by DMAHS on June 23, 2016 and scheduled for a hearing on August 23, 2016. However, in accordance with N.J.A.C. 10:60-3.5(a)3, 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. Since Petitioner's last assessment was performed on February 4, 2016, Horizon

performed the routine 6-month reassessment on August 8, 2016. Petitioner was provided with a copy of the assessment at the August 23, 2016 and the hearing was adjourned until September 9, 2016 because Petitioner "needed time to understand the new report". Initial Decision at page 2. Additionally, Petitioner continued to receive 25 hours of PCA services pending the outcome of the fair hearing process. Moreover, the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. Matthews v. Eldridge, 424 U.S. 319, 333 (1976). Thus, assuming *arguendo* that the notice was inadequate, inadequate notice is a procedural defect that may be cured by a de novo hearing. In re Appeal of Darcy, 114 N.J. Super. 454, 461 (App. Div. 1971). Here, Petitioner was afforded due process by this OAL hearing and the continuation of services pending the outcome of the appeal.

It is apparent from the record that the ALJ took into account D.S.'s specific circumstances and care needs and carefully considered each of the ADL tasks necessary to address D.S.'s specific needs and the amount of time necessary to complete those tasks. As a result, I find the ALJ's recommendation that D.S. be provided with 18 hours (1060 minutes) of weekly PCA services to be reasonable.

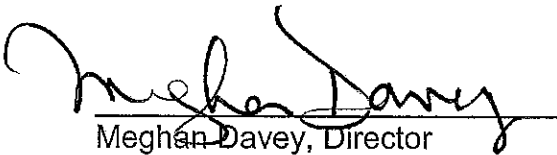
Additionally, I agree with D.S.'s exception that time should be given for medical visits and the administration of medication which are activities that are included in the regulations addressing PCA services. N.J.A.C. 10:60-3.3. Since the intent of the tool is to cover allowable PCA services, I agree that Petitioner be provided with 2 hours (120 minutes) per week for medical appointments and

attending weekly therapy sessions. I also find that an additional 35 minutes per week (5 minutes x 7 days) to assist D.S. with his medications is reasonable.

THEREFORE, it is on this 9th day of December 2016,

ORDERED:

That Petitioner shall receive 20 hours (1215 minutes) of PCA services per week.



Meghan Davey, Director
Division of Medical Assistance
and Health Services