



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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Governor

ELIZABETH CONNOLLY
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KIM GUADAGNO
Lt. Governor

MEGHAN DAVEY
Director

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

J.W.,

PETITIONER,

v.

UNITED HEALTHCARE,

RESPONDENT.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA.01634-16

As Director of the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence, the contents of the Office of Administrative Law case file, Respondent's exceptions to the Initial Decision and Petitioner's reply. Procedurally, the time period for the agency to render a Final Agency Decision in this matter is April 27, 2017 pursuant to an Order of Extension.

Based upon my review of the record, I hereby MODIFY the Initial Decision reversing Respondent's termination of Petitioner's Personal Care Assistant ("PCA") services. For the reasons which follow, I find that a reassessment should be performed.

United Healthcare's termination of PCA services is based upon the regulatory and contractual requirement that the primary caregiver is required to perform 8 hours of daily hands-on care. United contends that Petitioner is precluded from receiving more than 112 hours per week of services (i.e., 16 hours per day x 7 days = 112 hours). United accurately points out that, in order to qualify for private duty nursing (PDN) services, DMAHS' regulations require that:

1. There is a capable adult primary caregiver residing with the individual who accepts ongoing 24-hour responsibility for the health and welfare of the beneficiary;
2. The primary caregiver agrees to provide a **minimum of eight hours of hands-on care** to the individual in any 24-hour period (emphasis added); and
3. The home environment can accommodate the required equipment and licensed PDN personnel. [N.J.A.C.10:60-5.3(c)].

In this case, the primary caregiver, Petitioner's mother, has accepted daily responsibility for her son, including a minimum of eight hours per day of hands-on care. As to the number of hours which can be approved, N.J.A.C. 10:60-5.4(a) provides in part:

1. The Division shall determine and approve the total PDN hours for reimbursement, in accordance with N.J.A.C. 10:60-5.2(b). **A maximum of 16 hours of private duty nursing services may be provided in any 24-hour period** (emphasis added).
2. The determination of the total EPSDT/PDN hours approved, up to the maximum of 16 hours per 24-hour period, shall take into account alternative sources of care available to the care-giver such as medical day care.


3. In emergency situations, for example, when the sole caregiver has been hospitalized, the Division may authorize, for a limited time, additional hours beyond the 16-hour limit (emphasis added).

The regulations impose a 16-hour daily limit on PDN from all sources. Here, 8 hours of Petitioner's PDN care are provided by his caregiver mother. However, in this case, there are unique circumstances such that Petitioner requires the assistance of two people to complete some of his activities of daily living (ADL) needs. Specifically, in light of Petitioner's weight, size and rigid joints, two people are needed to safely bathe, dress, toilet, reposition and transfer him in the morning as well as in the evening to get him ready for bed. Thus, I find that PCA services are warranted to ensure that Petitioner's health and safety needs are met. As a result, I find that a reassessment should be performed to determine Petitioner's need for assistance from two individuals in order to adequately and safely address his ADL and Instrumental Activities of Daily Living (IADL) needs, along with a detailed explanation regarding the time and frequency of the needed service.

THEREFORE, it is on this 11<sup>th</sup> day of April 2017,

ORDERED:

That United Healthcare perform a reassessment. Petitioner's PCA services shall be continued at 51 hours per week pending the reassessment.

  
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Meghan Davey, Director  
Division of Medical Assistance  
and Health Services