



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**

S.V.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
UNITED HEALTHCARE,	:	OAL DKT. NO. HMA 06764-16
	:	
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 Petitioner's exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is April 17, 2017 pursuant to an Order of Extension.

Based upon my review of the record, I hereby ADOPT the Initial Decision affirming Respondent's reduction of Petitioner's Personal Care Assistant ("PCA")

services with two modifications. For the reasons which follow, I find Petitioner should be provided with 21.5 hours of weekly PCA services.

Petitioner was initially approved for 18 hours of weekly PCA services based on an assessment performed under the Global Options waiver program.¹ Inexplicably, following an August 10, 2014 assessment, Petitioner's hours were increased to 38 per week, despite the fact that the actual score on the assessment tool was only 7 hours per week. Thereafter, following an assessment on August 10, 2015 with a score of 13.75 hours, United Healthcare sought to reduce PCA hours from 38 to 15. This appeal followed. Following a hearing on December 15, 2016, the ALJ affirmed United Healthcare's reduction in services concluding that "[n]othing contained in the record would substantiate 38 PCA hours per week". I agree.

In his Initial Decision, the ALJ recommended that Petitioner be provided with 19.75 hours of services, the amount set forth in United Healthcare's most recent assessment dated November 2, 2016. For the reasons which follow, I agree with the time allotted in that assessment and will also allow additional time for bed linen changes due to soiling and for feeding/eating due to Petitioner's hand pain.

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

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).

tasks. It is apparent from the last three assessment reports (dated August 10, 2015, July 15, 2016 and November 2, 2016) that the nurses from United Healthcare took into account S.V.'s specific circumstances and care needs and carefully considered each of the Activities of Daily Living (ADL) tasks necessary to address her specific needs and the amount of time necessary to complete those tasks,. Significantly, the assessments address Petitioner's physical and cognitive limitations (including the nurses' personal observations of the Petitioner), her specific ADL and Instrumental Activities of Daily Living (IADL) needs, and an explanation regarding the time and frequency of the needed service. Like the Administrative Law Judge, I find that there is sufficient information in the assessment reports to justify a decrease in the 38 hours per week of services that Petitioner currently receives.

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. Moreover, 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).

Petitioner argues in exceptions that she should receive additional time for ambulation, meal preparation and laundry. I disagree.

As confirmed by Megan Weitzman R.N.'s testimony at the hearing in corroboration of her assessment reports, as well as the ALJ's observation of Petitioner at the hearing, Petitioner is able to ambulate without difficulty using her walker. Therefore, I disagree that Petitioner should be awarded additional time for this ADL. Additionally, I disagree that additional time should be awarded for meal preparation. The record indicates that Petitioner receives a home-delivered lunch from Mom's meals. Moreover, Nurse Weitzman awarded Petitioner the maximum amount of time on the assessment tool for breakfast (15 minutes) and dinner (25 minutes). These times are for basic meal preparation. Any additional time awarded would be to take into account special dietary needs, not the complexity of a particular meal that the individual requests. Similarly, there is no basis to award additional time for laundry when the Petitioner has a washing machine in her home. The aide can perform other needed tasks while the laundry is in the machine. There is simply no need for her to stay with the machine as she would have to do at a laundromat.

Petitioner also seeks an additional 10 minutes for lunch and dinner in order for her aide to cut her food into smaller portions. Petitioner testified that the pain in her hands becomes more acute when she uses a knife and fork. I am not persuaded that the aide needs an additional 20 minutes per day to cut Petitioner's food. As noted above, Petitioner receives a home-delivered meal for lunch. I find the 5 minutes per

lunch given by Nurse Weitzman in the assessment tool to be a sufficient amount of time for the aide to cut up the meal and serve it to Petitioner. I find that Petitioner should be provided with an additional 5 minutes per day (35 minutes per week) to cut up her evening meal.

Petitioner also seeks an additional 70 minutes per week (10 minutes x 7 days) to wash her soiled bed linen. I note that Nurse Weitzman's assessment awarded Petitioner 70 minutes per week (5 minutes x 2 occurrences per day) for the aide to clean up Petitioner's urine on the floor if she has an accident. I find that Petitioner should also be provided with the requested 70 minutes per week to wash her soiled bed linen at least until the next assessment. I suggest that Petitioner's care manager discuss available options with Petitioner such as a bedside commode and adult diapers to address her incontinence issues.

Based on the foregoing, Petitioner shall receive 21.5 hours (1290 minutes) of PCA services per week (1185 minutes awarded in the November 2, 2016 assessment plus an additional 105 minutes for feeding and washing soiled bed linen). No evidence was presented suggested that any needed service or task cannot be performed within this amount of time. If the necessary personal care and household tasks can be accomplished within 21.5 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.

THEREFORE, it is on this 23rd day of March 2017,

ORDERED:

That Petitioner shall receive 21.5 hours of PCA services per week.



Meghan Davey, Director
Division of Medical Assistance
and Health Services