

At the hearing, Melissa Sims, a Registered Nurse for Horizon, testified regarding the assessment she conducted using the PCA Tool. Petitioner is minimally impaired cognitively and had been receiving 15 hours a week of PCA assistance. As a result of her assessment in November 2019, it was determined that she failed to meet the criteria to receive PCA services.

PCA services are non-emergency, health related tasks to help individuals with activities of daily living (ADLs) 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. The regulations provide that PCA services are only warranted when the beneficiaries is "in need of moderate, or greater, hands-on assistance in at least one activity of daily living (ADL), or, minimal assistance or greater in three different ADLs, one of which must require hands-on assistance." N.J.A.C. 10:60-3.1(c). Additionally, instrumental activities of daily living (IADL) "such as meal preparation, laundry, housekeeping/cleaning, shopping, or other non-hands-on personal care tasks shall not be permitted as a stand-alone PCA service." N.J.A.C. 10:60-3.1(c)1. The assessments use the State-approved PCA Nursing Assessment Tool to calculate the hours.

The question is whether Petitioner meets the requirement of needing minimal assistance in three different ADLs including requiring hands-on help in one of those ADLs. It is Horizon's contention that the assessment shows Petitioner only requires limited assistance in two areas. ID at 5.

The record contains the PCA tool which found Petitioner needed limited assistance in bathing and supervision in ambulation and transferring. For toileting, the tool is marked that Petitioner needs both no assistance and limited assistance. Sims testified that this was an error. The narrative described that Petitioner "needs assistance with care due to pain and decreased mobility." R-1. No hours were awarded.

The Initial Decision concluded that Petitioner required minimal assistance for personal hygiene/grooming which would add a third ADL as required under N.J.A.C. 10:60-3.1(c). ID at 8. This was based on N.J.A.C.10:60-3.3(a) describing grooming assistance as being needed when "the beneficiary's upper extremities or motor skills being affected by a disability or whose level of cognitive disability requires such assistance regardless of mobility level of the upper extremities." While Petitioner may have decreased range of motion and have cognitive limitations, nothing in the record shows that Petitioner is unable to or needed assistance to perform the ADL of grooming. The record does not reflect that Petitioner testified that she encountered difficulties with grooming or explain what tasks encompassed by grooming that she was unable to perform. I conclude that the record does not support a finding that Petitioner needed minimal assistance in grooming.

I am concerned about the error that was in the original assessment and that it was not corrected. Rather a pen mark changed the toileting outcome to needs minimal assistance and no hours were provided. No new assessment was made using the tool to account for this error or to rectify the lack of hours. I find the statements by Sims and the arguments made by Horizon and used in the Initial Decision are significantly flawed

and there is a need for further explanation and testimony. As a result, I am compelled to reverse the Initial Decision.

The matter would usually be remanded for further proceedings, however, intervening policy guidance regarding the COVID-19 health emergency puts this case on a different footing and favors Petitioner. There is a statement in the decision, not countered by Horizon, that Petitioner's PCA hours were terminated in April 2020. On March 30, 2020 DMAHS issued guidance that all services that required a face to face assessment, like PCA, were to remain at the same approval level for the duration of the public health emergency. See <https://nj.gov/humanservices/library/slides/MCO%20Guidance%20on%20Prior%20Authorization.pdf>. It appears Petitioner's services were terminated in direct contradiction of this guidance. Thus, I reinstate her 15 hours that should have been continued regardless of the outcome of this fair hearing.

Based on my review of the record and based on findings above, I hereby REVERSE the Initial Decision. However, in light of the guidance, I FIND that Petitioner's 15 hours should be reinstated due to the March 30, 2020 guidance issued as a result of the COVID-19 health emergency. Moreover, since Petitioner's last assessment was over a year ago and since Petitioner testified that she had been hospitalized at some point during the pendency of the hearing, I hereby instruct Horizon to complete a telephonic assessment of Petitioner's current PCA needs and increase her hours, if warranted.

THEREFORE, it is on this ^{12th} day of FEBRUARY 2021,

ORDERED:

That the Initial Decision is hereby REVERSED; and

That due to prior guidance issued as part of the public health emergency,
Petitioner's 15 hours are reinstated.



Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance
and Health Services