



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

F.V.,
PETITIONER,
v.
HORIZON NJ HEALTH,
RESPONDENT.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 016988-14

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 23, 2015, in accordance with N.J.S.A. 52:14B-10 which requires an Agency Head to adopt, reject or modify the Initial Decision within 45 days of the agency's receipt. The Initial Decision was received on October 9, 2015.

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

services from 23 to 16 hours per week. For the reasons which follow, I find that a reassessment should be performed.

In addition to receiving 23 hours of PCA services through the Personal Preference Program, F.V. also attends an Adult Medical Day Care and is out of the home each weekday from 8:00 a.m. to 3:00 p.m. F.V. began receiving PCA benefits through the Personal Preference Program in January 2009. The Personal Preference Program, administered by the Division of Disability Services, allows elderly and disabled Medicaid recipients to direct and manage their PCA services. With a monthly cash allowance to cover 23 hours of PCA services, F.V. pays her daughter, with whom she resides, to provide needed care.

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's prior managed care organization (MCO) approved F.V. for 23 hours of weekly PCA services. Since F.V. transferred to Horizon NJ Health, three assessments have been performed that resulted in scores of 9 (September 10, 2014 assessment), 11.42 (November 21, 2014 assessment) and 9.75 (June 26, 2015 assessment). Despite these scores, Horizon determined that Petitioner should receive 16 hours of services per week. Presumably, Horizon awarded this amount to ease the household's transition to a reduced number of hours and

to “cover any additional needs”. Horizons exceptions at page 3. Nevertheless, Petitioner argues that Horizon is only able to justify a reduction in hours, even from a level it received from a prior MCO, only if the client’s condition has improved.

While the ALJ disagreed with Petitioner that a reduction cannot be supported unless there has been an improvement in the client’s medical condition, she found that Horizon needed to explain and justify how F.V.’s circumstances have changed since she was authorized to receive 23 hours by the prior MCO. The ALJ concluded that Horizon failed to meet its burden because there is no explanation as to why F.V. received 23 hours from the prior MCO. The ALJ based her conclusion 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). 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.¹ Unlike D.W., there is

¹ 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, I 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.

nothing in this record to show that F.V.'s condition has deteriorated over the course of last three assessments that have been completed since her transfer to Horizon. I disagree with Petitioner's argument that Horizon must continue to provide the same amount of PCA hours as the previous MCO if there has been no change in the Petitioner's medical condition. I am also not persuaded that a new MCO, here Horizon, has the burden of explaining how the prior MCO arrived at its decision to award 23 hours. I disagree that a new MCO that inherited a client that was afforded a certain amount of hours by the prior MCO must explain "how or why" the client was awarded this amount of services by the prior MCO.

It may be that the prior MCO erroneously awarded too many PCA hours. 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. Horizon does not have the burden to disprove the determination of a prior MCO.

I find it noteworthy that the ALJ herself points to the absence in the record to support a finding of a medical need for 23 PCA hours per week:

[Petitioner did not offer any] testimony on the assessment of her need for twenty-three hours provided by the prior managed care entity. Nor did petitioner's expert quantify any PCA hours or present a detailed justification or opinion for the higher hours. In her brief, petitioner also could not point to anything in the record that justified the higher number of hours but rather defended the attack on the sixteen hours in the face of assessments that calculated even lower hours.

[Initial Decision at page 13.]

I also find it significant that Petitioner presented no evidence suggesting that any needed service or task cannot be performed within 16 hours per week. Moreover, Petitioner provided no evidence or explanation as to why this level of PCA services is insufficient with respect to her care needs. If the necessary personal care and household tasks can be accomplished within 16 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.

In this case, when F.V. became a client of Horizon, it conducted a reassessment of her PCA needs. In conducting new assessments, Horizon's nurse was aware of FV'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 16 hours per week. The problem I have with Horizon's determination in this case is that the nurse who performed the assessments did not testify at the hearing. As a result, Petitioner and the ALJ were 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 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 ^{12th} day of November 2015,

ORDERED:

That Horizon NJ Health perform a reassessment. Petitioner's services shall be continued at 23 hours per week pending the reassessment.



Valerie J. Harr, Director
Division of Medical Assistance
and Health Services