



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

O.N.,
PETITIONER,
v.
UNITED HEALTHCARE,
RESPONDENT.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 12811-13

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 and the contents of the OAL case file. No exceptions to the Initial Decision were filed. Procedurally, the time period for the Agency Head to render a Final Agency Decision is April 6, 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 February 20, 2015.

Based upon my review of the record, I hereby ADOPT the Initial Decision modifying Respondent's reduction of Petitioner's Personal Care Assistant ("PCA") services from 40 to 21 hours per week and instead ordering the provision of 25 hours per week.

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.

On August 29, 2014, O.N.'s HMO, United Healthcare, conducted a scheduled assessment. Using the PCA assessment tool, the HMO nurse considered ten categories of activities of daily living (ADLS) and assigned numerical scores based on O.N.'s need for assistance and determined that the needed services can be provided within 21 hours per week. Unfortunately, the nurse who performed this assessment did not testify at the hearing and thus Petitioner's representative and the ALJ were unable to question the nurse about her findings. However, Petitioner's daughter-in-law did testify at the hearing and disputed some of the findings in the assessment report. Specifically, M.N. testified that the assessment incorrectly notes that Petitioner lives with her and her husband (O.N.'s son) when, in fact, she lives with her own husband, who is also incapacitated. Additionally, the assessment notes that Petitioner "occasionally" needs assistance with transferring. However, M.N. testified that

Petitioner is unable to transfer from a sitting or lying position to a standing position from a chair, couch or bed without assistance at any time. Additionally, M.N. contends, and Petitioner's physician confirmed, that Petitioner is incontinent and has frequent accidents that require assistance in addition to the help she receives with toileting. M.N. also reported that Petitioner, a Holocaust Survivor, suffers from post-traumatic stress which affects her mental status and ability to perform her ADLs.

Based on the testimony of Petitioner's daughter-in-law and the letter from Petitioner's physician, the ALJ concluded that Petitioner should be provided with an additional 4 hours per week. The ALJ reasoned that additional hours were needed to compensate for inaccuracies in the assessment tool; namely the inaccurate living environment, Petitioner's inability to transfer independently, incontinence and mental status.

Based upon the specific facts and circumstances presented here, I agree with the ALJ's determination and accept her 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).

THEREFORE, it is on this day of April 2015,

ORDERED:

That the Initial Decision recommending 25 hours of weekly PCA services is ADOPTED as the Final Decision.



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