



State of New Jersey

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Director

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

T.W.,
PETITIONER,
v.
UNITED HEALTHCARE,
RESPONDENT.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 13094-15

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, United Healthcare's exceptions to the Initial Decision and Petitioner's reply. Procedurally, the time period for the Agency Head to render a Final Agency Decision is December 28, 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 November 13, 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 20 to 12 hours per week. For the reasons which follow, I find that a reassessment should be performed.

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 June 5, 2015, T.W.'s managed care organization (MCO), United Healthcare, conducted a scheduled assessment. Using the State-approved PCA Beneficiary Assessment Tool, the MCO nurse had a face-to-face visit with T.W. and considered several categories related to his functional limitations and determined the amount of time T.W. needed for each category. Based on this assessment, the nurse determined that the needed services can be provided within 9.83 hours per week, which United Healthcare's Medical Director rounded up to 10 hours per week. Prior to the hearing, United Healthcare increased Petitioner's hours to 12 per week to take into account the additional time needed for meal preparation and personal hygiene. Unfortunately, the nurse who performed the assessment did not testify at the hearing and thus T.W. and the ALJ were unable to question him about his findings.

The ALJ determined that that T.W. should be categorized as "severely impaired" rather than "moderately impaired". Assuming, for argument's sake that the ALJ is correct, he nevertheless erroneously awarded 180 minutes **per day**, instead of 180 minutes **per week**, which is the maximum amount of time

permitted by the Assessment Tool. (See United Healthcare's Exceptions at page 2). Moreover, while I agree with the ALJ, that it is reasonable to assume that Petitioner needs assistance with toileting for three occurrences per day (rather than only one per day), I find that the 75 minutes per day (25 minutes per occurrence) awarded by the ALJ is excessive given that Petitioner is continent and only requires supervision and prompting.

With the exception of toileting, I find it significant that Petitioner presented no evidence suggesting that any needed service or task cannot be performed within 12 hours per week. Moreover, Petitioner provided no evidence or explanation as to why this amount of PCA services is insufficient with respect to his care needs. If the necessary personal care and household tasks can be accomplished within 12 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.

The difficulty I have with United Healthcare's determination in this case is that the assessing nurse did not testify at the hearing. As a result, Petitioner and the ALJ were unable to question him about his findings and scoring in the assessment tool. Furthermore, 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. Since the last assessment was performed in June, Petitioner is due for a reassessment. For this reason, coupled with the fact that the assessing nurse

did not testify at the hearing, I find that a new assessment is warranted. Should Petitioner disagree with the results of this assessment, he may request another fair hearing at that point.

THEREFORE, it is on this *17th* day of December 2015,

ORDERED:

That United Healthcare perform a reassessment. Petitioner's services shall be continued at 20 hours per week pending the reassessment.



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