

State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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Governor

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

AND HEALTH SERVICES

K.M.

PETITIONER.

WELLCARE.

V.

RESPONDENT.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 03808-17

As Assistant Commissioner of the Department of Human Services (DHS), designated by the Director of the Division of Medical Assistance and Health Services (DMAHS) to assume responsibility over this matter due her recusal, I have reviewed the record in this case, including the OAL case file, the documents in evidence and the Initial Decision in this matter. Both Parties filed Exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is September 25, 2017 pursuant to an Order of Extension.

Based upon my review of the record, I hereby ADOPT in part and MODIFY in part the Initial Decision reversing Respondent's determination that Petitioner receive 54 hours of Personal Care Assistant ("PCA") per week. For the reasons which follow, I find that Petitioner should be reevaluated to determine the appropriate allotment of weekly PCA services.

On October 14, 2016, Petitioner requested an additional 43 hours of PCA services in addition to the 54 hours of PCA services and 25 hours of Adult Medical Daycare (ADMC) services she was receiving each 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. Personal care assistance services shall not be approved or authorized when the purpose of the request is to provide supervision or companionship. N.J.A.C. 10:60-3.8(c).

Petitioner's brother, D.M., acts as her representative. Petitioner does not live with D.M. Petitioner lives in a house with D.M.'s mother-in-law, who also receives PCA services through WellCare.¹ Petitioner is currently enrolled in morning and afternoon AMDC for approximately 12 hours each day. Thereafter, Petitioner's aide is present in the house from 6:30 p.m. to 7:00 a.m. (T 66). Petitioner receives breakfast, lunch and dinner at the AMDC programs Monday through Friday, although she requires a light breakfast prior to leaving in the morning. (T 52). Petitioner does not require anything more than a snack when

¹ Contrary to his testimony, public records show that the Petitioner's residence is not owned by D.M.

she arrives home from AMDC. (T 51) However, since much of D.M.'s testimony focuses on services already provided during the day at AMDC, it is unclear what other specific services Petitioner requires in the evening and over-night hours when Petitioner is asleep.

The issue in this case is not the necessity of PCA services, but rather, the appropriate weekly allotment of such services. Both parties agree that Petitioner's medical condition renders her unable to perform the necessary activities of daily living. The ALJ correctly noted that the level of PCA services varies from person to person based on the medical needs, physical condition and living arrangements of each individual. Petitioner is currently in AMDC for 12 hours each day and receives 54 hours of PCA services each week. D.M. argues that additional hours are required to meet Petitioner's needs. Petitioner arrives home around 7 p.m. and has already had dinner. Petitioner may need help with housekeeping, bathing, personal hygiene and perhaps even prescribed physical therapy or exercise, but these specific services need to be clearly documented and included in her plan of care. The State approved PCA Beneficiary Assessment tool allows for additional time where there is a justified need for a particular service, including those services enumerated in N.J.A.C. 10:60-3.3.

In this case, the ALJ concluded that Petitioner should receive an increase in PCA hours, but found that Petitioner did not necessarily establish a need for 97 PCA hours each week. The decision fails to explain why 54 hours are insufficient with respect to addressing Petitioner's specific care needs or point to any needed services or task that cannot be performed within the 54 hours. Moreover, the decision does not address those services performed during AMDC

or the duplication of services where there is already another aide in the household performing PCA services, including but not limited to meal preparation, feeding, housekeeping and laundry. If the necessary personal care and household tasks can be accomplished within 54 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, not to provide monitoring in case a particular condition occurs.

THEREFORE, it is on this 31 day of AUGUST 2017,

ORDERED:

That the Initial Decision is ADOPTED in part and MODIFIED in part. The Initial Decision is hereby ADOPTED with regard to the determination that Petitioner did not establish a need for 97 PCA hours each week and that Respondent should conduct another evaluation to determine the appropriate amount of PCA hours Petitioner requires; and

That the Initial Decision is MODIFIED in that that record does not clearly support the conclusion that Petitioner demonstrated a need for an increase in her PCA hours beyond the 54 hours she currently receives; and

IT IS FURTHER ORDERED:

That the matter be returned to Respondent for an evaluation of Petitioner's specific needs within the construct of the PCA Beneficiary Assessment tool. Respondent should conduct an in home assessment taking into account Petitioner's needs from the time she arrives home from AMDC until she goes to sleep; and then again from the time she awakes in the morning until she leaves

for AMDC. The assessment should address Petitioner's physical and cognitive limitations (including the nurse's 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. Respondent should note that PCA services are for specific services enumerated in N.J.A.C. 10:60-3.3. PCA services are not meant to provide supervision during the overnight hours when Petitioner is asleep. I have attached the Instructions to the PCA tool for appropriate guidance.

Bonny Fraser, Esq.

Assistant Commissioner

Office of Legal Affairs

Department of Human Services