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

B.F.

PETITIONER,

v.

UNITED HEALTHCARE

RESPONDENT.

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ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 14035-18

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the documents in evidence and the exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is July 2, 2018 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 receipt. The Initial Decision was received on May 18, 2018.

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 was previously approved for 35 hours of weekly PCA services through New Jersey Managed Long Term Services and Supports (MLTSS) Medicaid waiver by a different Managed Care Organization (MCO). As noted in prior Final Agency Decisions, a new MCO that inherited a client that was afforded a certain amount of hours is not required to explain "how or why" the client was given this amount of services. Thus, in this case, United does not have the burden to disprove the prior assessment. 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.

I am not persuaded by Petitioner's argument that United Healthcare must continue to provide the same amount of PCA hours given in a prior assessment if there has been no change in the Petitioner's medical condition. In arguing that there must be an improvement in the client's condition in order to reduce services, Petitioner relies on the unpublished Appellate Division decision, D.W. v. Division of Med.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), a case factually distinct from this one. 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. 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, the prior Director of DMAHS 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.

Moreover, 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. Indeed, the Appellate Division has upheld the termination of PCA services, noting that a reassessment is required at least once every six months to evaluate an individual's need for continued PCA services. As a result, the Appellate Court found that "an individual who has received approval for eligible services is not thereby entitled to rely ad infinitum on the initial approval and remains subject to . . . reevaluation at least once every six months". J.R. v. Div. of Med. Assist. & Health Servs. and Div. of Disability Servs., No. A-0648-14 (App. Div. April 18, 2016). (Op. at 9)

In this case, when Petitioner became a client of United Healthcare, it conducted a reassessment of her PCA needs. In conducting the new assessment, United's nurse was aware of Petitioner's current medical conditions and needs and the tasks necessary to meet her specific needs. United's nurse testified at the hearing that the times listed for each activity on the PCA tool are guidelines that can be adjusted in extraordinary situations. However, she did not feel that the Petitioner's conditions were so extraordinary as to warrant additional time. She also testified that in two of the categories on the PCA tool, bathing and dressing, she would have allotted additional time had Petitioner communicated to her that she either wanted or needed assistance in these areas.

The record indicates that Petitioner required additional time for bathing and dressing that was not included in the original assessment. As a result, the ALJ correctly determined that Petitioner was entitled to 21 weekly PCA hours. If the necessary personal care and household tasks can be accomplished within 21 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.

THEREFORE, it is on this ^{25th} day of JUNE 2018,

ORDERED:

That the Initial Decision is hereby ADOPTED.


Meghan Davey, Director
Division of Medical Assistance
and Health Services