

Administrative Law (OAL) on August 22, 2018. A hearing was initially scheduled for October 30, 2018 but was adjourned for ninety days at Petitioner's request. On January 12, 2019, the Parties appeared at the Franklin Township Municipal Court and agreed to another adjournment to permit Horizon to conduct another home assessment since the original assessor was unavailable. On January 22, 2019, Horizon's Amy McCaffrey, R.N., conducted a PCA assessment of Petitioner and determined that he required 42 weekly hours of PCA services. Petitioner's attorney was provided a copy of the PCA assessment but no new letter of determination, including hearing rights appears to have been issued. No appeal of the January 22, 2019 assessment was filed with the DMAHS Fair Hearing Unit and the matter was never transmitted to the OAL.

Thereafter, Petitioner filed a motion for summary decision seeking dismissal of the matter alleging that the internal appeal process had not been exhausted on the January 22, 2019 PCA assessment and that the OAL did not have jurisdiction over said assessment. The motion was denied and a hearing was held on March 12, 2019. However, the record was not closed until October 1, 2019. At all times relevant to these proceedings, Petitioner continued to receive the fifty-six hours of PCA services assessed by his previous Managed Care Organization (MCO).

For the reasons that follow, I hereby REVERSE the ALJ and find that a reassessment should be performed.

Administrative agencies have the discretion to determine whether a case is contested. N.J.S.A. 52:14f-7(a). The OAL acquires jurisdiction over a matter after it has been determined to be a contested case by an agency head. N.J.A.C. 1:1-3.2(a). A contested case is commenced in the State agency with appropriate subject matter jurisdiction. N.J.A.C. 1:1-3.1. DMAHS is the administrative agency within the Department of Human Services (DHS) that is charged with administering the Medicaid program. N.J.S.A. 30:4D-4. On August 22, 2018, DMAHS determined that a contested case existed with regard to Horizon's July 2018 and August 2018 denials of service. Accordingly, the OAL

acquired jurisdiction over the transmitted matters.

More than four months after the matters were transmitted, the Parties agreed to an adjournment so that Petitioner could again be assessed. It is my understanding from the record that this was done because the nurse who had originally assessed Petitioner was no longer employed by Horizon. It is also my understanding from the record and lack of exception to the Initial Decision that the Parties agreed to the reassessment in the course of litigation in order to have competent non-hearsay testimony presented at the hearing. I note that the Petitioner's objections came only after it received the new PCA assessment upholding the prior 42 weekly hours of PCA services. However, I disagree with the ALJ that the January 22, 2019 assessment did not require new notice and an internal appeal to fall within the court's jurisdiction. See 42 C.F.R. 438.402 and 42 C.F.R. 438.408. If the Parties agreed to a new assessment, it is inexplicable why they failed to enter into a settlement withdrawal that maintained Petitioner's PCA services pending the reassessment so that the issue before the OAL could be disposed of properly. That said, Petitioner has not been deprived of a hearing and has received a continuation of benefits at 56 hours of PCA services per week during the pendency of the hearing.

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 56 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 that amount of services. It may be that the prior MCO erroneously awarded too many PCA hours. Thus, in this case, Horizon 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 the argument that Horizon 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, the Initial Decision 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 Horizon, it conducted a reassessment of his PCA needs using the state approved PCA tool. In conducting the new assessment, Horizon's nurse, McCaffrey, was aware of Petitioner's current medical conditions and needs, and the tasks necessary to meet his specific needs. At the hearing, McCaffrey, who has conducted hundreds of PCA assessments, went through each category of her findings pursuant to the PCA tool. She testified that the times listed for each activity on the tool were guidelines, but that based on her personal observations and information provided by Petitioner's caregiver daughter-in-law, she did not feel Petitioner's conditions were so extraordinary as to warrant additional time. In contrast, Petitioner's witness, Michael Newell, R.N., M.S.N., is not trained in the use of the PCA tool, nor did he use it to evaluate Petitioner. Instead, he prepared a report using what he identified as a Functional Independence Measure tool which he believed to be a better tool but which is not approved by the State of New Jersey for Medicaid assessments. Despite these considerations, the ALJ arbitrarily determined that McCaffrey's testimony was not credible and points to no documented evidence of her inconsistencies. See Clowes v. Terminix, 109 N.J. 577 (1988); N.J.A.C. 1:1-15.5(b).

That said, I am concerned that the assessment being appealed was conducted in June 2018; that a second assessment was conducted in January 2019 and that the hearing did not occur until May 14, 2019. I am also troubled by the fact that the record was not closed until October 1, 2019. Almost a year and a half delay, with continued benefits in dispute, is unacceptable and makes it difficult, if not impossible, to correctly determine the amount of services Petitioner currently requires.

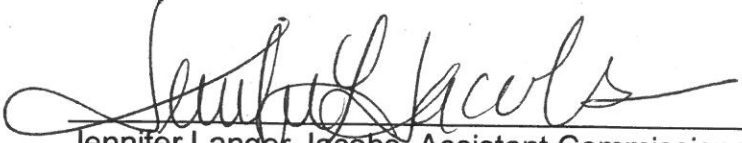
Due to the continuation of benefits pending the fair hearing as well as the delay from the last hearing date to this Final Agency Decision, Petitioner's current status must be reassessed. At this point Petitioner will have been receiving 56 hours of weekly PCA services for a year and a half.

THEREFORE, it is on this 20th day of NOVEMBER 2019,

ORDERED:

That given the passage of time and continuation of benefits, the issue regarding the amount of PCA hours provided by Horizon is dismissed as moot; and

That the Initial Decision is hereby REVERSED and Horizon shall assess Petitioner's current condition within four weeks of this decision to determine the present medical necessity for PCA services and issue a new determination notice with appeal rights.


Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance
and Health Services