

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
PO Box 712
Trenton, NJ 08625-0712

CAROLE JOHNSON Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

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

E.O.,

PETITIONER.

**ADMINISTRATIVE ACTION** 

٧.

**FINAL AGENCY DECISION** 

OAL DKT. NO. HMA 13070-19

UNITED HEALTHCARE.

RESPONDENT.

As Assistant Commissioner for 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 and Respondent's exceptions to the Initial Decision. Procedurally, the time period to render a Final Agency Decision is May 26, 2020 in accordance with and Order of Extension. The Initial Decision was received on February 24, 2020.

This matter arises from Horizon Blue Cross Blue Shield of New Jersey's (Horizon) July 5, 2019 denial of Petitioner's request for Personal Care Assistant (PCA) services. That determination was properly appealed to the Division of Medical Assistance and Health Services (DMAHS) Fair Hearing Unit and transmitted to the Office of Administrative Law (OAL) on September 13, 2019. The December 19, 2019 hearing was adjourned in order to allow time for the County of Bergen, Department of Health Services, to determine if it would

represent Petitioner. Thereafter, an in-person hearing took place on January 14, 2020. The record closed on February 3, 2020.

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. To qualify for PCA services, beneficiaries "must be in need of moderate, or great, hands-on assistance in at least one activity of daily living (ADL), or minimal assistance or greater in three different ADLs, one of which must require hands-on assistance." N.J.A.C. 10:60-3.1(c)1. Assistance with Instrumental Activities of Daily Living (IADL), such as meal preparation, laundry, housekeeping/cleaning, shopping or other non-hands-on personal care tasks shall not be permitted as a stand-alone PCA service." N.J.A.C. 10:60-3.1(c)1. In other words, if a beneficiary does not require the minimum amount of ADLs, they do not qualify for PCA services, even if they may have assistance needs with IADLs.

Petitioner suffers from Paranoid Schizophrenia, Depression/Anxiety and Chronic Pain. On December 5, 2019, Horizon's Galina Model, R.N., assessed Petitioner and completed the PCA assessment tool in accordance with N.J.A.C. 10:60-3.9(b).¹ The results of the PCA assessment showed that Petitioner did not meet the threshold requirements for PCA eligibility pursuant to N.J.A.C. 10:60-3.1(c)1. Based on her observations and Petitioner's statements, Model determined that Petitioner was minimally cognitively impaired² and required only limited assistance in one ADL, "Dressing." Petitioner was scored as needing "no assistance" in any other ADLs. There is no evidence in the record to contradict this, nor

<sup>&</sup>lt;sup>1</sup> The PCA assessment associate with Horizon's July 5, 2019 denial notice was conducted on or about June 5, 2019. An additional assessment, conducted on December 5, 2019, occurred during the pendency of the OAL hearing and replaced the earlier assessment. Both PCA assessments seem to indicate that Petitioner was not eligible for PCA services as she did not have enough problems with ADLs.

<sup>&</sup>lt;sup>2</sup> Cognitive assessment is a separate category from ADLs.

did the ALJ find Model to be not credible.

The Initial Decision notes that as a result of personally observing and questioning Petitioner, additional needs were apparent.3 Those additional needs were identified as bathing, shopping for groceries and meal preparation. I note that only one of these, bathing, is an ADL while the other two categories are IADLs. The PCA assessment noted Petitioner expressed that "she takes a full shower daily." This changed at the hearing when Petitioner expressed that she takes sponge baths instead of showers because her shower/tub is filled with clothes. Petitioner did not at the time of assessment, nor at the hearing, state that she was incapable of bathing herself, only that she had chosen to take sponge baths instead. While the ALJ finds that Petitioner should be awarded 30 minutes per day, seven days per week, for bathing assistance, she makes no finding that Petitioner is physically unable to bathe herself, nor does she point to any evidence supporting her conclusion that Petitioner requires 30 minutes of daily assistance in this area. Rather, it appears from the PCA tool and the Initial Decision that Petitioner may require assistance with housekeeping. Unfortunately, housekeeping is an IADL, which Petitioner does not qualify for unless she meets the ADL threshold. N.J.A.C. 10:60-3.1(c)1.

In determining that Petitioner requires 16.75 hours of PCA services, the ALJ seems to rely heavily on the Mental Residual Functional Capacity Report (MRFCR) report. This report, submitted post hearing, without any witness to establish the document's authenticity or to be cross examined by Respondent, and over Respondent's objection, was admitted into evidence. The Initial Decision acknowledges that this report is hearsay but admitted it pursuant to the residuum rule. N.J.A.C. 1:1-15.5(a) requires "some legally competent evidence" to exist "to an extent sufficient to provide assurances of reliability and to avoid the

<sup>&</sup>lt;sup>3</sup> The Initial Decision notes that the ALJ personally observed and questioned Petitioner "on the day that she initially appeared for a hearing and after E.O. testified at a Fair Hearing." It is unclear what is meant by this. The record indicates that a hearing was held on January 14, 2020. Any additional observations or testimony do not seem to be part of the record.

fact or appearance of arbitrariness. Nothing in the record, nor the Initial Decision, points to the legally competent evidence the ALJ relied upon to justify the admission of an unsigned document, drafted on the day of the hearing and submitted to the OAL nearly three weeks after the in-person hearing occurred.

Moreover, while the Initial Decision notes that the MRFCR was admitted for the limited purpose of confirming Petitioner's mental limitations, it is difficult to overlook the fact that it is the only documentary evidence offered by Petitioner to support her position, and the only documentary evidence that could be relied upon by the ALJ to increase Petitioner's cognitive assessment and consequently her PCA services. The PCA assessment tool, Petitioner's contemporaneous statements and Petitioner's testimony do not show a need for assistance with her ADLs such that she meets the threshold level required by N.J.A.C. 10:60-3.1. Accordingly, the ALJs determination of hours is unsupported by credible evidence.

The issue before the court is the appropriateness of the December 2019 assessment of Petitioner's needs. The admissibility of the MRFCR is not supported by the residuum rule. The unsigned report, dated January 14, 2020, provided only to counsel for the Petitioner and submitted to the OAL and Respondent on or about February 3, 2020, three weeks after the hearing, with no witness to establish the document's authenticity or to be cross examined by the Respondent, should not have been admitted as evidence in the record. Moreover, unlike Nurse Model's in-person testimony, the MRFCR report does not address the categories of the state approved PCA tool or the Petitioner's ability to perform any ADLs. Absent any other evidence with regard to Petitioner's abilities to perform the enumerated ADLs, I FIND that the credible evidence in the record indicates that Petitioner does not satisfy the eligibility criteria necessary to qualify for Personal Care Assistant (PCA) services pursuant to N.J.A.C. 10:60-3.1 et seq. I note that Petitioner may reapply for PCA services if there is a change in her condition. Additionally, I suggest that she contact the New Jersey Aging and Disability Resource Connection at 1-877-222-3737 for information about available programs and

services.

THEREFORE, it is on this day of MAY 2020,

ORDERED:

That the Initial Decision is hereby REVERSED.

Jennifer Langer Jacobs, Assistant Commissioner

Division of Medical Assistance

and Health Services