



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

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

B.R.,

PETITIONER,

v.

UNITED HEALTHCARE,

RESPONDENTS.

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ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 08578-2021

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is May 9, 2022, in accordance with an Order of Extension.

This matter arises from United Healthcare's (United) assessment of Personal Care Assistance (PCA) hours for Petitioner. This was an initial assessment for services. Petitioner had requested forty hours of PCA services and elected to receive those services through the Personal Preference Program (PPP). Based upon United's assessment, it was determined that twenty-two hours of PCA services were medically necessary, and United denied Petitioner's request for forty PCA hours per week. Petitioner, through her son, T.R., who provides care to Petitioner, appealed the denial, and the matter was transmitted to OAL.

PCA services are non-emergency, health related tasks to help individuals with activities of daily living (ADLs) 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. The regulations provide that PCA services are only warranted when the beneficiaries is "in need of moderate, or greater, 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). Additionally, 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. The assessments use the State-approved PCA Nursing Assessment Tool (PCA Tool) to calculate the hours.

At the hearing, Dr. David Sorrentino, Medical Director at United, testified regarding the assessment that was performed by Candice Clervoyant, R.N.,¹ a case manager nurse trained on the PCA Tool. Due to the COVID-19 pandemic, the assessment was done telephonically on July 20, 2021, and T.R. was interviewed with regard to Petitioner's need for PCA services. The nurse's assessment initially scored thirty-four hours on the PCA Tool for Petitioner; however, following a medical necessity review by Dr. Sorrentino, the scoring changed, as Dr. Sorrentino determined that Petitioner did not need help to eat or position, but required limited help with four activities of daily living consisting of mobility, toileting, grooming, and dressing. P-3. Dr. Sorrentino additionally determined that Petitioner required extensive help with two activities of daily living: transferring and bathing. Ibid. By letter, dated July 28, 2021, United advised Petitioner that it was limiting the number of PCA hours to twenty-two hours per week,

¹ Nurse Clervoyant is no longer employed with United and did not testify at the hearing in this matter.

effective July 27, 2021. Ibid. On September 3, 2021, following a Stage 1, internal appeal, United upheld their determination that Petitioner's needs could be met with twenty-two PCA hours per week. P-4.

On November 24, 2021, United agreed to perform an in-person reassessment of Petitioner's PCA needs. ID at 2. By letter dated December 7, 2021, United advised Petitioner of its decision to again deny her request for forty PCA hours per week. Ibid. However, Petitioner was advised that United would increase Petitioner's PCA hours to thirty-four hours per week. Ibid. Petitioner did not appeal this subsequent determination.

The Initial Decision in this matter upheld United's initial determination, as set forth in its September 3, 2021 letter, that twenty-two PCA hours per week were appropriate. While I concur with the Initial Decision's determination in relation to United initial assessment, that assessment and ultimate decision is now moot, as a subsequent assessment was performed that resulted in an increase of Petitioner's PCA hours, based on Petitioner's current care needs. An action is moot when a decision that is being sought in a particular matter will have no practical effect on the existing controversy. In re Conroy, 109 N.J. Super. 453, 458 (App. Div. 1983)). Issues that have become moot are improper subjects for judicial review. Anderson v. Sills, 143 N.J. Super. 432, 437-438 (Ch. Div. 1976) (“[F]or reasons of judicial economy and restraint, courts will not decide cases in which the issue is hypothetical, a judgment cannot grant effective relief, or the parties do not have concrete adversity of interest.”). The September 3, 2021 determination, which is the subject of the present matter, was superseded by the December 7, 2021 determination to increase Petitioner's PCA hours to thirty-four hours per week. Petitioner did not appeal the December 7, 2021 determination, and as a result, she is currently entitled to thirty-four PCA hours per week, which is twelve hours more than originally determined. Affirming original determination, thus, has no practical effect on the services Petitioner can currently receive, as Petitioner's receipt of thirty-four hours, instead of twenty-two hours, will continue pending a new assessment.

Accordingly, for the reasons set forth above, I hereby MODIFY the Initial Decision, as set forth above, and FIND that the present matter is moot.

THEREFORE, it is on this 3rd day of MAY 2022,

ORDERED:

That the Initial Decision is hereby MODIFIED, as set forth herein.



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