



State of New Jersey

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DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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Assistant Commissioner

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

K.L.

PETITIONER,

v.

HORIZON NJ HEALTH,

RESPONDENT.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

**OAL DKT. NO. HMA 05328-21
ON REMAND: HMA 11986-19
HMA 02263-20**

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, and the contents of the Office of Administrative Law (OAL) case file. Neither party filed exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is December 19, 2022 in accordance with and Order of Extension. The Initial Decision was received on September 20, 2022.

This matter arises from Horizon New Jersey Health's (Horizon) June 5, 2019 and October 9, 2019 determinations reducing Petitioner's Personal Care Assistance (PCA) services. Petitioner appealed these determinations to the Department of Human Services, Division of Medical Assistance and Health Services, and the matters were transmitted to the OAL for fair hearing. On March 5, 2021, an Initial Decision recommended that Petitioner continue to receive 27 hours of weekly PCA services. On June 1, 2021, the matter was remanded to the OAL for additional documents and testimony regarding the status of Petitioner's residency, the type and frequency of services available to Petitioner through his residence, and the type and frequency of services provided by his PPP caregiver, R.L. On September 20, 2022, the ALJ issued an Initial Decision again upholding the 27 hours of weekly PCA services.

PCA services are non-emergency, health related tasks to help individuals with activities of daily living (ADL) and with household duties essential to the individual's health and comfort, such as bathing, dressing, meal preparation and light housekeeping. N.J.A.C. 10:60-3.3. All personal care services require pre-authorization. N.J.A.C. 10:60-3.9(a). To obtain prior authorization, a registered nurse, employed by the Petitioner's Managed Care Organization (MCO) Horizon, must complete a face-to-face evaluation and the State PCA Assessment form. N.J.A.C. 10:60-3.9(b). There is no requirement that a Managed Care Organization (MCO), such as 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. Once PCA services are authorized, a nursing reassessment is performed every twelve 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. As a result, "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..." 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). 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. Nevertheless, in order to receive PCA services, applicants must reach a threshold requirement.

In 2018, the New Jersey Administrative Code was amended to address home care services, including but not limited to authorization of services.¹ To qualify for PCA services, beneficiaries “must be in need of moderate, or great, hands-on assistance in at least one 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.

In 2014, Petitioner was determined eligible to receive PCA hours. In 2016, the Petitioner elected to receive those services through the Personal Preference Program (PPP) which permits the eligible recipient to hire a caregiver of their choosing, in this case his step-mother, R.L. While Petitioner lived at home, he received multiple assessments resulting in a determinations of PCA services that ranged from 19 to 27 hours each week. However, Horizon continued to authorize Petitioner for 27 hours per week. At some point in 2018, Petitioner moved out of his parent’s home and into a home that provides its residents with caregiving services (WILO). Petitioner continues to reside there with a roommate and live-in staff. In May 2019, Horizon conducted a PCA assessment that reduced Petitioner’s weekly hours from twenty-seven to thirteen. In September 2019, another assessment further reduced Petitioner’s hours, resulting in the termination of PCA services. Horizon notified Petitioner of these two assessments on June 5, 2019 and October 7, 2019 respectively.

¹ The amended rule change was proposed in August 2017 with public comment due October 20, 2017. The change went into effect on September 17, 2018. 49 N.J.A.R. 2698(a); 50 N.J.A.R. 1992(b).

By the September 24, 2019 assessment, Petitioner did not meet the minimum requirements for any of the eight ADL categories. The in-person assessment was conducted by Nurse Natalie Topchev, monitored by her supervisor Sandra Giove, and aided by Petitioner's parents, B.L. and R.L., both of whom provided information during the assessment. The PCA assessment tool and nursing summary reflect that Petitioner does not need hands-on assistance with ambulating, transferring, bathing, feeding, positioning, toileting, personal hygiene or dressing. Rather, Petitioner may benefit from some supervision and cueing. Nurse Topchev's observations and summary of the information provided by B.L. and R.L. is supported by B.L. and R.L.'s testimony that Petitioner independently ambulates (T2, p.37), transfers (T2, p.39), toilets (T2, p. 43), positions himself (T2, p. 40), feeds himself (T2, p. 33) and dresses himself (T2, p.58). The only categories that remain disputed are bathing and personal hygiene.

Of the remaining categories, bathing and personal hygiene, Petitioner needs to show that he requires moderate or great hands-on assistance in at least one of the two. N.J.A.C. 10:60-3.1(c)1. The term "moderate assistance" is defined as "weight bearing support, hand-over-hand assistance, in which the beneficiary is involved with physically performing less than 50 percent of the tasks on their own." N.J.A.C. 10:60-1.2. In the May and September 2019 PCA assessments, Petitioner was determined to need either no assistance or limited assistance in these categories. Again this is confirmed by Petitioner's parents' testimony that he requires someone set the temperature of the shower; monitor the amount of product he uses (T2, p. 46); and occasionally help him shave if he misses a spot (T2, p. 55). Otherwise, Petitioner independently performs all tasks associated with these ADLs. At most, Petitioner requires minimal or limited assistance, which the regulations define as "non-weight bearing support with minimal physical assistance from the caregiver, when the beneficiary needs physical help in guided maneuvering of limbs or other non-weight bearing assistance such as getting in and out of the tub, dressing, or assistance in washing difficult to reach places." N.J.A.C.10:60-1.2. I FIND that the Petitioner does not require

moderate or great hands-on assistance in any one ADL, including the categories of bathing and personal hygiene.

Because Petitioner does not require moderate or great hands-on-assistance in any one ADL, he would need 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. The Initial Decision relies heavily on an August 20, 2019 letter from Petitioner’s physician and notes that the Horizon nurses disregarded his medical opinion. I disagree. At the outset, it should be noted that the Petitioner’s physician did not testify, was not cross-examined and did not complete a PCA assessment. His letter confirms that Petitioner showers independently with someone to set the water temperature and feeds himself with supervision and cueing. Neither of these rises to the level of moderate assistance, nor is either an example of hands-on care. The letter suggests that Petitioner, on occasion, requires supervision and cueing with regard to bathing and personal hygiene, and assistance with meal preparation, which is not an ADL. These statements support Horizon’s position. While Petitioner could arguably benefit from minimal assistance in bathing or personal hygiene, Petitioner fails to meet the three ADL threshold for minimal assistance. Therefore, I FIND, that Petitioner does not meet the regulatory requirements set forth in N.J.A.C. 10:60-3.1(c)1 necessary to establish eligibility for PCA services.

Because I FIND that Petitioner does not meet the threshold requirements for PCA services, it is unnecessary to address whether or not Petitioner’s residence at WILO and continued receipt of PCA services through the PPP constitutes a duplication of services. Additionally, during the first hearing, it appeared that Petitioner was requesting PPP services in addition to those services provided by the staff at his residence. However, B.L.’s February 28, 2022 letter to ALJ Baron makes clear that they are not asking for PPP when Petitioner is a WILO, only when he is at home, which can be no more than 20 days per year. (T2, p. 64 and 80). In the past, DMAHS has held that voluntary, intermittent time at home with one’s family, away from an individual’s regular residence, already providing PCA services, does

not entitle that individual to duplicative services at home. C.J. v Horizon NJ Health, HMA 06301-16 (Oct. 30, 2017). However, as previously stated, because the Petitioner does not meet the threshold requirements for PCA services, he is not entitled to said services regardless of who would provide the care.

TEREFORE, it is on this 15th day of DECEMBER 2022,

ORDERED:

That the Initial Decision is REVERSED.



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