



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
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**

R.E.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
HORIZON NJ HEALTH,	:	OAL DKT. NO. HMA 08207-21
	:	
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 Horizon NJ Health's (Horizon) Exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is October 21, 2022 pursuant to an Order of Extension. The Initial Decision was received on July 20, 2022.

Based upon my review of the record and for the reasons which follow, I hereby REVERSE the ALJ's recommended decision finding that Petitioner is eligible for adult day health services. I FIND that there is insufficient evidence to establish that Petitioner satisfies

the clinical eligibility criteria necessary to qualify for adult day health services pursuant to N.J.A.C. 10:164-1.5. The ALJ found that Petitioner satisfied the eligibility criteria because Horizon failed to explain why the Petitioner's epilepsy did not affect his ability to perform ADLs. I disagree with that determination.

As set forth in the Initial Decision and Horizon's exceptions to the Initial Decision, the burden is on Petitioner to establish eligibility for adult day health services. N.J.A.C. 10:164-1.5(e)4. In order to qualify, the regulations state that the individual must require limited assistance with a minimum of two activities of daily living (ADL) provided by the facility, have at least one skilled service provided by the facility, a rehabilitation need or require supervision and cueing in at least three ADLs and have problems with cognitive functioning. N.J.A.C. 10:164-1.5(f).

On or about August 30, 2021, Horizon's Nurse Laurel Kelly conducted an assessment of Petitioner's needs and found no indication that Petitioner required skilled nursing services, rehabilitation services or any assistance with his ADLs. Kelly found that Petitioner did have memory deficits and issues with decision making, but that these applied to chores and errands and were easily remedied with written reminders. On March 22, 2022, Horizon's Nurse Charmaine Ellington conducted a second assessment to provide the court with a more updated overview of Petitioner's needs. She also found that Petitioner was completely independent with his ADLs. She noted also that Petitioner and his mother stated that he suffered from a weekly seizure which caused him to "stare into space." There was no indication that the seizures required emergency intervention or skilled nursing services.

Petitioner contends that he meets the criteria for adult day health services because he may need supervision by a nurse in the event that he has a seizure. However, Petitioner's treating physician, Dr. Michael Gelfand, and mother testified that his seizures are irregular but infrequent. While the Petitioner is at risk for a fall, the symptoms of the seizure are generally mild and do not require emergency intervention. Rather, as Dr. Gelfand testified, the Petitioner is unable to perform his ADLs for a momentary period following his seizures.

There is nothing in the record that speaks to how long these episodes last or which ADLs are affected, if any.

There is no indication that Petitioner's epilepsy requires continuous physician or nursing intervention. This is clearly a regulatory requirement. Indeed, N.J.A.C. 10:164-1.2 specifically states: skilled service "means a needed skilled service provided by an RN or a licensed practical nurse, including but not limited to: . . . (3). Nurse monitoring (for example, medication administration, pacemaker checks, or the monitoring of urinary output, unstable blood glucose or unstable blood pressure that requires physician and/or advanced practice nurse intervention) . . ." (emphasis added). Dr. Gelfand explained that the postictal state Petitioner experiences after an epileptic seizure, but before returning to baseline, is an altered state of consciousness characterized by drowsiness, confusion, nausea, hypertension, headaches, migraines or other disorienting symptoms. He explained that during this state, Petitioner is unable to function normally or perform ADLs. However, there is no indication that Petitioner actually receives or requires assistance with any of the defined categories of ADLs (ambulating, eating, bathing, dressing, or performing personal hygiene) during these periods.

Moreover, the testimony that Petitioner's seizures occur at most once per week, results in a level of frequency that would not reach the threshold of "limited assistance" or "supervision/cueing" support with his ADLs. The Administrative Code states that "limited assistance" demands "physical help in maneuvering of limbs or other non-weight-bearing assistance at least three times during the past three days." N.J.A.C. 10:164-1.2. Moreover, someone qualifying for "supervision/cueing" assistance must be in need of:

oversight, encouragement, or cueing provided at least three times during the past three days, or supervision provided one or more times plus physical assistance provided no more than two times for a total of at least three episodes of assistance or supervision.

N.J.A.C. 10:164-1.2. Based on the foregoing, I agree with Horizon that Petitioner has not satisfied the skilled service requirement necessary to qualify for adult day health services.

Additionally, Petitioner may qualify for social day care, and I suggest that he 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 18th day of OCTOBER , 2022

ORDERED:

That the Initial Decision is hereby REVERSED.



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