



PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

State of New Jersey
DEPARTMENT OF HUMAN SERVICES
Division of Medical Assistance and Health Services
P.O. Box 712
Trenton, NJ 08625-0712

SARAH ADELMAN
Commissioner

GREGORY WOODS
Assistant Commissioner

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

B.R.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

FIDELIS CARE,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 07322-2024

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. Exceptions were filed by Petitioner in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is November 18, 2024, in accordance with an Order of Extension.

This matter arises from Fidelis Care's (Fidelis) reduction of Personal Care Assistance (PCA) hours for Petitioner from forty-nine hours per week to thirty-three hours per week. An internal appeal was conducted, which upheld the reduction of PCA hours. (R-1, p.14-18). Petitioner appealed the reduction of PCA hours, and the matter was transmitted to the OAL for a hearing, which occurred on August 1, 2024.

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, and ambulation. 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 beneficiary 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.

In this matter, on April 8, 2024, Dennis Ladiana, a Registered Nurse, performed a reassessment of Petitioner's PCA services to determine the hours of care needed. ID at 3. The PCA Tool measures the following ADLs: cognition, ambulation, transferring, bathing, feeding, positioning, toileting, personal hygiene, and dressing. Prior to the April 2024 assessment, Petitioner was eligible for forty-nine PCA hours per week. ID at 2. Fidelis was not permitted to reduce PCA hours during the public health emergency. On April 30, 2024, Fidelis notified Petitioner that their internal appeal upheld the reduction of PCA care from forty-nine hours per week down to thirty-three hours per week. (R-1, p.3-5). Petitioner appealed the reduction of PCA hours, and the matter was transmitted to the OAL for a hearing, which occurred on August 1, 2024. Prior to the hearing, on July 3, 2024, another assessment was completed which resulted in an increase to Petitioner's PCA hours from thirty-three hours per week to thirty-eight hours per week. ID at 1

(footnote 1).

At the hearing, Teresa Howard, Manager of Utilization Management, testified that Petitioner had been receiving forty-nine hours per week of PCA services since 2018 and due to the public health emergency, Fidelis was not permitted to reduce any PCA hours during that time. ID at 2. After the public health emergency was lifted, an in-home assessment of Petitioner was completed on April 8, 2024. Ibid. Utilizing the PCA Tool, Petitioner's hours were reduced down to thirty-three hours per week. Ibid. Teresa Howard testified that the differences between the 2019 assessment and the April 8, 2024 assessment are that Petitioner requires less assistance with toileting, positioning, dressing, housekeeping, and meal preparation, and Petitioner no longer required any assistance with feeding. ID at 3. Petitioner requires some increased assistance with transferring and personal hygiene. Ibid. Ms. Howard explained that the decrease in assistance with meal preparation was because Petitioner was able to consume a regular diet at the time and maximum points can only be received for this category when an individual is on a liquid diet. Ibid. Additionally, the decrease in the need for assistance with toileting was because Petitioner was not fully weight-bearing at the time of the 2019 assessment and was deemed a high fall risk. Ibid.

While addressing the differences between the April 8, 2024 assessment and the July 3, 2024 assessment which resulted in thirty-eight PCA hours per week, Ms. Howard stated that there was a decrease in the need for assistance with bathing but an increase in the need for assistance with positioning, personal hygiene/grooming, dressing, meal preparation, and laundry. ID at 3. Ms. Howard noted that an external review conducted by CareBridge on June 12, 2024, recommended a decrease in PCA services down to thirty hours, but Fidelis did not follow this recommendation. Ibid.

Dennis Ladiana, RN, testified regarding the assessment he conducted using the

State-approved PCA Tool. ID at 3. Mr. Ladiana agreed with Ms. Howard's testimony and had nothing to add, change, or correct. Ibid.

Petitioner testified on their own behalf. Petitioner testified extensively about their health history and current medical conditions, as well as upcoming medical interventions. ID at 4. Petitioner did not provide any clinical records or other evidence to support their position that forty-nine hours of PCA services per week are medically necessary. Ibid.

The Initial Decision found that Fidelis correctly assessed the number of PCA hours Petitioner is currently entitled based on the level of assistance Petitioner needs with their ADLs. ID at 6. The ALJ went on to state that Petitioner did not provide any documentation, such as notes or letters from medical professionals or medical records, nor any testimony from medical professionals to support their position that forty-nine hours of PCA services per week is medically necessary. Ibid. The Initial Decision concluded that Petitioner was not eligible for additional PCA hours per week and is only entitled to thirty-eight PCA hours per week, relying on the July 3, 2024 assessment. Ibid.

Petitioner filed exceptions to the initial decision. In the exceptions Petitioner indicated that they are legally blind and used talk-to-text software to draft the exceptions. In summary, Petitioner argued that Petitioner were not provided a copy of the PCA Tool results until two days before the fair hearing, that their hours should be increased in the areas of shower and wound cleaning, positioning, toileting, dressing, grooming, and to allow time for recreational activities.

The PCA assessment before the court was the April 8, 2024, assessment. Therefore, we are required to only consider the information which was available to Fidelis in April 2024, when they made the decision to reduce the PCA services from forty-nine hours to thirty-three hours per week. It is quite possible for Petitioner's status to have changed between the April 2024 assessment being appealed and the more recent July

2024 assessment. However, for the purpose of this appeal, any such changes are not pertinent. The July 2024 assessment cannot be considered when reviewing the correctness of Fidelis's April 2024 decision, and therefore it was improper for the Initial Decision to primarily focus on the outcome of the more recent July 2024 assessment.

Nonetheless, there is nothing in the record showing Petitioner provided clinical records or other evidence supporting a determination of forty-nine hours per week of PCA services. Fidelis supported the results of the PCA Tool with testimony from both the nurse that performed the assessment and the Manager of Utilization Management. Their testimony clearly outlined the changes in Petitioner's needs that resulted in the reduction of hours. While I am sympathetic to the Petitioner's situation, the arguments made in Petitioner's exceptions do not convince me that the hours should be increased, because they do not provide evidence to support the contention that the April 8, 2024 assessment was incorrect or that the Petitioner is entitled to additional hours of PCA services under relevant state regulations. Therefore, I FIND that Petitioner was properly assessed on April 8, 2024. As such, the reduction of PDN services to thirty-three hours per week was appropriate under N.J.A.C. 10:60-5.4. I note that the July 3, 2024 assessment, which determined that Petitioner was entitled to thirty-eight hours per week of PCA services is outside the scope of this decision. As such, and given that this assessment was more recent and superseded the April 8, 2024 assessment, Petitioner shall continue to receive those services.

THEREFORE, it is on this 15th day of NOVEMBER 2024,

ORDERED:

The Initial Decision, which confirmed that Fidelis correctly assessed the Petitioner's need for PCA services based on the April 8, 2024 assessment, is ADOPTED. The Initial Decision's focus on the July 3, 2024 assessment is REVERSED.

Gregory Woods

Gregory Woods, Assistant Commissioner
Division of Medical Assistance and Health Services