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

S.C.,

PETITIONER,

ADMINISTRATIVE ACTION

v.

FINAL AGENCY DECISION

DIVISION OF MEDICAL ASSISTANCE

OAL DKT. NO. HMA 01051-2023

AND HEALTH SERVICES AND

HORIZON BLUE CROSS BLUE

SHIELD OF NEW JERSEY,

RESPONDENTS.

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the OAL case file, the documents in evidence, and the Initial Decision in this matter. Neither party filed exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is April 11, 2024 in accordance with an Order of Extension.

The matter arises from the denial of Petitioner's request for additional (Personal Care Assistance) PCA hours on November 9, 2021, and December 28, 2021 by Horizon Blue Cross Blue Shield of New Jersey (Horizon). (R-4 and R-10.)

New Jersey participates in federal Medicaid program pursuant to the New Jersey Medical Assistance and Health Services Act, N.J.S.A. 30:4D-1 to 19.5. Eligibility for Medicaid in New Jersey is governed by regulation adopted in accordance with the authority granted by N.J.S.A. 30:4D -1 to the Commissioner of the DHS. The DMAHS is the agency within the DHS that administers the Medicaid program. N.J.S.A. 30:4D-5; N.J.A.C. 10:49-1.1. (a). Accordingly, the DMAHS is responsible for protecting the interests of the New Jersey Medicaid Program and its beneficiaries. N.J.A.C. 10:49-11.1(b).

The program at issue is PCA. The purpose of PCA services is to provide 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. Eligibility for PCA services requires prior authorization. N.J.A.C. 10:60-3.9(a). To obtain prior authorization, "a registered nurse employed by the PCA provider agency shall complete a face-to-face evaluation of the beneficiary, at the beneficiary's home, and shall complete the State-approved PCA Assessment form." N.J.A.C. 10:60-3.9(b)(1). The form includes the following categories of care to consider:

- i. Supportive service/living environment needs;
- ii. Cognitive/mental status;
- iii. Ambulation/mobility;
- iv. Ability to transfer (for example, from wheelchair to bed);
- v. Ability to feed himself or herself;

- vi. Ability to bathe himself or herself;
- vii. Ability to toilet himself or herself;
- viii. Ability to perform grooming and dressing tasks;
- ix. Ability to perform housekeeping and shopping tasks; and
- x. Ability to perform laundry tasks.

[Ibid.]

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. Once PCA services are authorized, a nursing assessment 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.

Personal care assistant services shall be limited to a maximum of 40 hours per calendar work week and shall be prior authorized in accordance with N.J.A.C. 10:60-3.9. Additional hours of service may be approved by the Division of Disability Services (DDS) or the Division of Medical Assistance and Health Services (DMAHS) on a case-by-case basis, based on exceptional circumstances. N.J.A.C.10: -60-3.8 (g).

Here, Petitioner has been receiving 60 hours of PCA hours a week due to medical diagnoses of inclusion body myositis and severe restricted lung disease since 2019. Petitioner needed assistance with ADL due to her symptoms of muscle wasting, muscle atrophy, and chronic pain. (R-7.) On October 4, 2021, L.A., a registered nurse for Horizon, conducted a PCA assessment for Petitioner utilizing the PCA Assessment Tool through video conferencing software and concluded that Petitioner required 55.75 hours of PCA per week. (R-7.) On October 5, 2021, Petitioner emailed Horizon regarding their concerns about the October 4, 2021 assessment and requested additional PCA hours. (P-3.) On or around November 9, 2021, Horizon, sent Petitioner a letter advising them

that they were reducing the number of PCA service hours to 55.75 hours per week effective December 1, 2021. (R-4.) Horizon made this finding based on a video assessment, which showed that Petitioner could move around independently in a wheelchair but was dependent on others for their remaining care. (Id. at 2.) However, Petitioner would continue receiving sixty hours of PCA care a week due to the COVID-19 pandemic. (Ibid.) Petitioner appealed this determination internally. (R-2).

Thereafter, on or around December 28, 2021, Horizon sent Petitioner a letter indicating that upon its second review of their request for an increase in PCA service hours, the denial was upheld. (R-10.) The assessment did not show a need for additional PCA service hours and Petitioner would continue to receive sixty hours each week of PCA service. (Id. at 2.)

Petitioner then requested a fair hearing to contest the reduction and the denial for additional PCA hours, and the matter was transmitted to the Office of Administrative Law (OAL) on February 2, 2023. After several status conferences, Horizon was permitted to file a motion to expand the record, allowing Petitioner to include subsequent PCA assessments in the record. Horizon filed its motion on May 18, 2023, and on May 26, 2023, Petitioner filed their response to Horizon's motion. Horizon's motion to expand the record was granted and a hearing was held on August 17, 2023. The record remained open to allow the parties to submit post-hearing summation briefs. The parties submitted their post-hearing summation briefs on December 15, 2023.¹ (ID at page 2.)

D.S., a care manager in Horizon's Managed Long-Term Services Support Division, conducted two additional assessments of Petitioner after the October 4, 2021 assessment that was the basis for the determination at issue. D.S. completed the first of these two

¹ According to Horizon's post-hearing summation brief dated December 15, 2023, Petitioner's PCA hours will remain 60 hours per week.

assessments on September 28, 2022 and based on this assessment, D.S. recommended 57.42 hours of PCA service per week. (R-6) Thereafter, on March 27, 2023 D.S. completed the second assessment of Petitioner and based on this assessment, D.S. recommended 60 hours of PCA services for Petitioner. (R-5.)

At the hearing, L.A., a registered nurse, testified for Horizon that they usually conduct in-person assessments using the PCA Tool regarding an individual's need for PCA hours. However, because of the COVID-19 pandemic, they conducted Petitioner's October 2021 PCA assessment remotely via video conferencing.

D.S. also testified at the OAL hearing on behalf of Horizon regarding the September 28, 2022 assessment, where D.S. gave the same scores and time limits for each category in the September 2022 assessment that were in the October 2021 assessment at issue except that D.S. gave Petitioner more time for bed linen changes. Therefore, D.S. determined that pursuant to the September 28, 2022 Petitioner required 57.42 hours of PCA services per week. (R-6.)

D.S. further testified that they conducted a third subsequent assessment of Petitioner on March 27, 2023, and concluded that Petitioner required 60 hours of PCA services per hour because Petitioner cognitively was not staying focused on the topics. D.S. also indicated that their interactions with Petitioner from their meeting in June 2023, to the date of the hearing, have not led D.S. to believe that a new assessment was needed. (ID at page 7.)

At the hearing, Petitioner testified in detail about their condition and daily needs that they alleged were not covered by the PCA Tool. Petitioner indicated that they needed 12 hours of PCA care per day at 7 days due to their updated condition. (P-9.) Petitioner testified that they did not submit information about their updated condition when they requested a fair hearing on December 15, 2021. (Tr. at 137-152.) However, Petitioner

did submit a letter from M.S., MD requesting to increase Petitioner's PCA hours to at least 84 hours per week in PCA on March 15, 2023. (P-9.)

The Initial Decision found that Horizon did not err when it determined on December 28, 2021 that Petitioner was eligible for 55.75 hours of PCA services each week. I agree.

In this case, Horizon performed its routine reassessment of Petitioner on October 4, 2021. Horizon's representative, L.A. conducted a video evaluation of Petitioner, and utilized the PCA Tool to assess the appropriate numbers of PCA hours per week needed for assistance with ADLs for Petitioner. The PCA Tool assesses the categories and indicates that the maximum times listed for each activity are only guidelines. Based on the assessment, L.A. recommended to reduce Petitioner's PCA services from 60 hours to 55.75 hours, however, Horizon never changed Petitioner's PCA hours due to the COVID-10 pandemic.

Petitioner expressed a need for additional PCA hours. Extenuating circumstances necessitating more than 40 hours of PCA services per week require approval by the DDS or DMAHS under Medicaid regulation. Petitioner failed to demonstrate that the number of PCA hours awarded by Horizon were insufficient to meet Petitioner's needs or that exceptional circumstances exist to warrant more than the 60 hours of PCA services awarded. As the ALJ found in the Initial Decision, although Petitioner submitted numerous medical records and letters from their medical providers in support of their argument, those medical records and letters do not specifically address the categories of care and the additional amount of PCA service time that Petitioner needs regarding their ADLs and IADLs.

I do disagree with the ALJ's statement that cleaning the BIPAP and nebulizer is not part of PCA service. This can be considered part of the two hours per week that was


assessed for housekeeping tasks, and there is no evidence in the record that the petitioner's need for housekeeping exceeds that amount.

Based on my review of the record and based on the facts contained therein, I find that Horizon properly reduced Petitioner's PCA hours pursuant to Medicaid regulations based on L.A.'s October 4, 2021 assessment. I also find that Horizon properly denied Petitioner's request for additional PCA service hours as nothing in the record supports a finding for additional hours. However, Petitioner may benefit from additional care coordination from Horizon for physical therapy and medical transportation.

THEREFORE, it is on this 10th day of APRIL 2024,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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