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

N.T.

PETITIONER,

v.

HORIZON NJ HEALTH,

RESPONDENT.

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ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 04116-2024

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 not filed by either party in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is April 17, 2025, in accordance with an Order of Extension.

This matter arises from Horizon NJ Health's (Horizon) assessment of Personal Care Assistance (PCA) hours for Petitioner. Petitioner appealed the denial, and the matter was transmitted to the OAL for a hearing.

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 New Jersey Is An Equal Opportunity Employer • Printed on Recycled Paper and Recyclable

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 are "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.

On September 19, 2023, Jolinda Zielinska, a Registered Nurse, performed a reassessment of Petitioner's PCA services to determine the hours of care needed. (R-1). Petitioner is twenty-eight years old and has been diagnosed with a brain tumor, "dropping syndrome," epilepsy, moderate cognition impairment, and right shoulder dislocation, which limits range of motion in that shoulder. ID at 4. Previously, Petitioner had been approved for twenty-seven hours a week of PCA services. ID at 1. On November 6, 2023, Horizon notified Petitioner that their hours of PCA services per week were being reduced to twenty-one hours effective December 1, 2023. (R-3). Petitioner filed an internal appeal and by letter dated January 19, 2024, Horizon notified Petitioner of their decision to uphold the decision. (R-4). A Fair Hearing was requested, and a Zoom hearing took place on September 10, 2024, October 25, 2024, and January 3, 2025. ID at 2.

At the hearing, Jolinda Zielinska, RN, testified for Horizon regarding the assessment she conducted using the PCA Tool. ID at 3. Nurse Zielinska went to Petitioner's home to conduct the annual PCA assessment and made observations and

obtained information about Petitioner's activities of daily living (ADLs) and instrumental activities of daily living (IADLs). ID at 4. Both Petitioner and their father, S.T., were present for the assessment. Ibid. During the evaluation, S.T. provided most of the information. Ibid. Nurse Zielinska found Petitioner to be oriented as to person, place, and time. Ibid. Nurse Zielinska completed the PCA Tool during her visit and assigned scores for ambulation, transferring, bathing, eating, positioning, toileting, personal hygiene/grooming, dressing, and for IADLs such as housekeeping services, bed linen changes, shopping for groceries, meal preparation, and laundry. ID at 4-6. (R-1). More specifically, to support the score for ambulation, Nurse Zielinska stated that Petitioner needs to hold onto another person to maintain their balance going up and down stairs. ID at 4. For transferring, which is the ability to go from a stationary position to another, Petitioner was able to move from a seated to a standing position without assistance. Ibid. Additionally, Petitioner stated that he did not require assistance with transferring. Ibid. For bathing, Nurse Zielinska testified that S.T. explained that Petitioner utilizes a shower chair and that Petitioner needs help getting in and out of the shower chair. ID at 5. Additionally, Petitioner needs significant assistance with washing and drying. Ibid. For eating, Nurse Zielinska stated that S.T. informed her that Petitioner needs assistance with cutting their food into smaller portions as Petitioner cannot use a knife. Ibid. There can also be confusion episodes during mealtimes. Ibid. For toileting, Petitioner is continent but can have accidents when confused. Ibid. Petitioner also needs assistance with cleaning after using the toilet. Ibid. Nurse Zielinska testified that S.T. assists Petitioner with shaving and cutting Petitioner's nails, but overall Petitioner needs limited assistance with personal hygiene/grooming. Ibid. For dressing, Nurse Zielinska testified that based on her observations and discussions with S.T., Petitioner needs limited assistance with dressing primarily because of Petitioner's shoulder issues. Ibid. Nurse Zielinska went on

to discuss Petitioner's needs regarding IADLs. For housekeeping services, S.T. advised Nurse Zielinska that Petitioner's bed required changing at least three times per week because of excess sweating. ID at 6. Nurse Zielinska noted that a washer and dryer were present in Petitioner's home, which impacts the allotted time for that category. Ibid. Regarding meals, S.T. explained that he shops separately for Petitioner and that Petitioner's meal plan differs significantly from the rest of the family. Ibid. When tabulated, the number for both ADLs and IADLs totaled 21.25 hours. Ibid. (R-1). Nurse Zielinska testified that she was unable to explain the reduction of Petitioner's hours from the twenty-seven hours determined in the prior year's evaluation to the twenty-one hours determined in this evaluation, but that she was certain in her own evaluation. ID at 7.

Dr. Olushoga, a Medical Director with Horizon, also testified. ID at 7. Dr. Olushoga testified that she has reviewed hundreds of PCA Tools, including Petitioner's, which is the subject of this appeal. ID at 8. Dr. Olushoga testified that when she reviews RN-completed PCA Tools and the prescription of the treating physician, she mainly looks for internal consistency and does not review medical records and notes relating to the assessed individual. Ibid. Dr. Olushoga stated that she will, when appropriate, contact the assessing nurse, but did not speak to Nurse Zielinska regarding this PCA assessment. Ibid. Lastly, Dr. Olushoga testified that out of the hundreds of PCA Tools she reviewed, she has never made a determination that varied from the evaluating nurse. Ibid.

In the Initial Decision, the Administrative Law Judge (ALJ) found the testimony of both Nurse Zielinska and Dr. Olushoga to be entirely credible. ID at 8. With that being said, the ALJ expressed concern that Nurse Zielinska failed to review readily available documents and information necessary for a proper evaluation of Petitioner. ID at 16. More importantly, the ALJ found that the testimony of Dr. Olushoga lacked substance and

was unsupported. ID at 20. The ALJ pointed out that Dr. Olushoga reviewed hundreds of PCA assessments and has never made a determination that varied from the evaluating nurse. ID at 8. Additionally, the ALJ found that Dr. Olushoga did not review Petitioner's medical history, past assessments, and PCA care records and that there was a complete lack of testimony related to Petitioner's diagnoses and how Nurse Zielinska's determinations matched Petitioner's needs. ID at 20-21. Ultimately, because Dr. Olushoga failed to review the evidence and speak with Nurse Zielinska before rendering her expert opinion about the PCA Tool score, the ALJ found Dr. Olushoga's testimony to be a net opinion and therefore it was not considered. ID at 22.

In making the determination as to whether the September 2023 PCA assessment was correct, the ALJ also took into consideration a more recent PCA assessment that was completed on November 5, 2024. ID at 22, (R-8). Nurse Zielinska completed the November 2024 assessment and determined that Petitioner qualified for 23.17 hours. (R-8). When comparing the November 2024 assessment to the September 2023 assessment, certain sections allocate more time and certain sections allocate less time. (R-1, R-8). The ALJ found it appropriate, especially in the absence of contradictory testimony or evidence from Petitioner, to conclude that Petitioner should receive the higher of the scores in each section of the 2023 and 2024 PCA assessments. ID at 22. The result of this analysis is that Petitioner would receive 24.92 hours PCA services per week. ID at 23.

I disagree with this determination and hereby Reverse the Initial Decision. To be clear, I agree with the Initial Decision that it is problematic that Dr. Olushoga testified that she does not review any medical records or notes relating to the assessed individual prior to signing off on a nurses PCA assessment. It is equally concerning that Dr. Olushoga has reviewed hundreds of PCA assessments and has never made a determination that

varied from the evaluating nurse. As Dr. Olushoga did not review Petitioner's records, past assessment, or speak with Nurse Zielinska prior to the hearing, thereby basing her opinion solely on the PCA assessment completed by Nurse Zielinska, I agree that her opinion should not be considered.

Moving on to Nurse Zielinska, I also agree with the Initial Decision that it is problematic that she failed to review readily available documents and information. More specifically, Nurse Zielinska should have reviewed Petitioner's prior PCA assessment. When benefits are being reduced or terminated, it is the obligation of the provider to put forth a detailed explanation to justify the change in benefits. On page 11 of the assessment, in the nursing summary section, it instructs the RN to "be sure to include any changes in the member's condition that warrant a change in his/her service hours."

(R-1 at 11). In that section Nurse Zielinska wrote:

PPP annual assessment completed on 09.18.2023 at mbrs home in presence of [T.S.], father and PR. [N.T.] is a 28 yr old Asian [person] who speaks English. Need for translation denied. Mbr was AAOx3, daily decision moderately impaired as evidenced by mbr needing reminders, prompting with medication regimen, personal hygiene, and safety measures. Procedural memory intact as mbr verbalized [their] morning routine in sequence. ST memory impaired as mbr recalled 0 out of 3 words after 5 minutes. Mbr observed ambulating without assistive device at steady gait independently, father by members side for safety supervision due to seizure precaution and fall risk. Requires assistance when ambulating up and down the stairs daily. Mbr observed transferring independently, supervision for safety. As per father mbr has frequent dropping episodes, where member falls to the ground, and has a moment of confusion post episode. Father states mbr cannot be left alone unsupervised. Mbr requires hands on assistance with ambulation, bathing, feeding, toileting, PH, dressing. Mbr lives with parents and sibling. Continues to meet criteria, tool score 21.25, recommend 21 hours per week of PPP services.

Nurse Zielinska did not provide any description or analysis of the change in Petitioner's condition that warranted a change in their PCA hours. In order to understand the reason behind the reduction or termination of the PCA hours, there must be evidence and/or

testimony specifically addressing the change in Petitioner's condition that warranted the change. See C.S. v. United Healthcare, 2015 N.J. Agen. LEXIS 320, Initial Decision (June 4, 2015), modified Dir. (July 2, 2015). Ordinarily, when this occurs the matter would be remanded to further develop the record regarding the change in Petitioner's condition that warranted the reduction in hours. But here, the record is clear that Nurse Zielinska is unable to explain the reduced hours from Petitioner's prior evaluation and therefore remanding the matter would not resolve this issue.

So far, I agree with the Initial Decision. Where I disagree is with the ALJ's consideration of the November 2024 assessment in reaching the Initial Decision. I recognize that the specific circumstances of the case may have led the ALJ, in an attempt to cobble together a fair and equitable resolution, to choose the method of taking the higher of the scores in each category on the September 2023 and November 2024 assessments. However, this is not an acceptable approach. The purpose of the fair hearing is to make a determination on whether Horizon correctly assessed Petitioner's need for PCA hours on September 19, 2023. The November 2024 assessment, which took place after the assessment that is in dispute is out-of-scope and should not be included in the record in this case.

Given this, and as Horizon has not adequately explained the change in Petitioner's condition that warranted the reduction in hours, I find that no reduction in PCA hours was appropriate, and Horizon should have maintained the previously approved PCA hours.

Based upon my review of the record and for the reasons set forth herein, I hereby REVERSE the Initial Decision in this matter and find that the reduction in Petitioner's PCA hours was unwarranted.

THEREFORE, it is on this 15th day of APRIL 2025,

ORDERED:

That the Initial Decision is hereby REVERSED, as set forth herein and that Petitioner's PCA hours be restored to the level of twenty-seven hours per week immediately.

Gregory Woods

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