



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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MEGHAN DAVEY
Director

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

G.F.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

BERGEN COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 16502-2015

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. No exceptions were filed. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is February 6, 2017 in accordance with an Order of Extension. The Initial Decision was received on November 7, 2016.

This matter concerns Petitioner's request for a post-eligibility deduction from her \$4,579.84 monthly income to pay a companion service to stay with her 24 hours a day,

7 days a week. As proof that this service was medically necessary, Petitioner provided an undated letter from Maryann Schran, M.D. Dr. Schran did not testify at the hearing nor did anyone on Petitioner's behalf. It is not clear if Dr. Schran is a participating physician in Petitioner's Managed Care Organization (MCO), who is responsible for the Plan of Care and would assess Petitioner's medical condition.

Based on my review of the record and the applicable rules, I REVERSE the Initial Decision and FIND that Petitioner has not demonstrated by a preponderance of credible evidence that it is medically necessary to have a companion 24 hours a day. A finding of fact based on hearsay must be supported by competent evidence. N.J.A.C. 1:1-15.5(b), the **residuum rule**, requires "some legally competent evidence" to exist "to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness." Petitioner presented no live testimony. No medical or clinical witness was sworn in as an expert to testify. Rather Petitioner filed a brief and attached a letter from Dr. Schran, which also contained hearsay statements regarding a conversation with John Sorrentino, the administrator of Atrium Assisted Living facility. Exhibit C. The documents were offered for expert testimony without any opportunity to voir dire the individuals or to cross-examine them. Thus, I FIND that Petitioner has not presented any legally competent evidence to demonstrate medical need for the services.¹

Petitioner is a Medicaid recipient residing in an assisted living (AL) facility that has clear regulations that require certification that the AL facility can meet every resident's needs and this 24 hour companion is duplication of services that the AL facility is required to provide. If Mr. Sorrentino's hearsay statement is true and the AL

¹ The bills submitted by Petitioner show that one individual provided services for a period of 24 hours a day. Exhibit C. Dr. Schran's letter fails to address what medically necessary services were being paid for and provided while the companion slept.

facility cannot meet Petitioner's needs, then the AL facility must address this deficiency in accordance with its licensing regulations. For example, the AL facility must have performed an initial assessment and is required to update Petitioner's need for services as needed. See N.J.A.C. 8:36-7.5. Petitioner would also be required to have an annual certification by a "physician, advanced practice nurse or physician assistant" that "the resident does not have needs which exceed the care that the facility or program is capable of providing." N.J.A.C. 8:36-7.5(e). The regulations go on to provide that "[i]f it is determined that there is a medical need for a transfer of a resident to another health care facility because the assisted living residence, comprehensive personal care home or assisted living program cannot meet the resident's needs, such transfers shall be initiated promptly, in accordance with N.J.A.C. 8:36-5.1(d)." N.J.A.C. 8:36-7.5(f). This begs the question how Atrium Assisted Living would care for Petitioner if and when she doesn't have funds to pay for the alleged medically necessary care.²

Falls resulting in the need for medical treatment require reporting as a critical incident to Petitioner's MCO. See <http://www.state.nj.us/humanservices/dmahs/info/resources/care/hmo-contract.pdf> at Article 9.10.2. The record does not reflect that this has been done despite Dr. Schran writing that a fall caused her to be hospitalized for one week and well as a number of trips to the emergency room. Furthermore, there is more oversight to Petitioner's care than a single doctor. It does not appear that Petitioner's doctor consulted the Petitioner's MCO care manager, the AL's nursing staff

² According to Petitioner's submission two weeks of 24 hour care costs \$2,240. Exhibit C. If this companion service was to be included in the post-eligibility deduction, Petitioner does not have enough income to pay for this "medically necessary" care for an entire month. While Petitioner's total income is \$4,579.84, part of that income is from her status as a beneficiary of a trust that holds rental property. Petitioner's attorney sought to reduce the rental income by maintenance expenses. As a result, the post-eligibility deductions are based on monthly income ranging from \$2,195.80 to \$3,835.80. Thus, Petitioner's physician and the AL director determined it was "medically necessary" for Petitioner to incur a monthly expense of \$4,480 without having the income to do so and presented no plan for how to provide this "medically necessary" companion service when her income runs out.

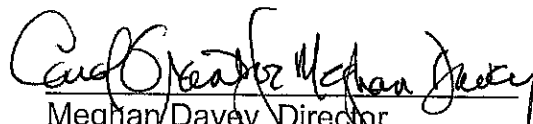
and others responsible for her plan of care. Indeed, there are protocols and procedures that address individuals who are at risk for falls. However, Petitioner has provided no medically competent evidence that Dr. Schran or Mr. Sorrentino followed any of those procedures in her case. See https://www.cdc.gov/steady/pdf/algorithm_2015-04-a.pdf. Rather Petitioner is seeking a 24 hour a day companion without presenting any competent evidence that this is medically necessary, much less based on a plan of care.

THEREFORE, it is on this ^{3rd} day of FEBRUARY 2017,

ORDERED:

That the Initial Decision is hereby REVERSED with regard to the finding of medical necessity as it is based on the unsupported hearsay testimony; and

That Petitioner's post-eligibility deductions remain as calculated by Bergen County.


Meghan Davey, Director
Division of Medical Assistance
and Health Services