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**Department of Human Services**  
**Division of Medical Assistance and Health Services**  
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 Director

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

G.P.,	:	
	:	
PETITIONER,	:	<b>ADMINISTRATIVE ACTION</b>
	:	
v.	:	<b>FINAL AGENCY DECISION</b>
	:	
AMERIGROUP	:	<b>OAL DKT. NO. HMA 00032-17</b>
	:	
RESPONDENTS.	:	

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the case file and the documents in evidence. Neither party filed exceptions. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is March 21, 2019 in accordance with an Order of Extension. The Initial Decision was received on December 20, 2018.

This matter concerns the reduction of Petitioner's Personal Care Assistant (PCA) hours from eighty-six to fifty-two hours per week after review by Amerigroup.

Petitioner has cerebral palsy, has suffered a stroke, is immobile and is unable to communicate but for certain eye movements and tapping with one finger. Prior to moving home, Petitioner was living in a nursing facility. Upon transitioning home, Petitioner received Managed Long Term Support and Services (MLTSS), including eighty-six PCA hours and 56 Private Duty Nursing (PDN) hours per week. Petitioner was assessed on September 13, 2016 by Amerigroup's nurse. On November 3, 2016, Dr. Anthony-Wilson advised Petitioner that his PCA hours were being reduced based on the September 3<sup>rd</sup> PCA tool assessment. Petitioner appealed the decision and Amerigroup continued to provide eighty-six hours of weekly PCA services pending the appeal. Dr. Joshua Core, D.O., conducted the internal appellate review and affirmed the decision to reduce Petitioner's PCA hours to fifty-two per week. On December 8, 2016, Petitioner was advised that the decision to reduce PCA hours was affirmed. On December 28, 2016, this office received Petitioner's request for a fair hearing and transmitted the matter to the Office of Administrative Law (OAL) that same day.

PCA services are defined as health-related tasks performed by a qualified individual in a recipient's place of residence, under the supervision of a registered nurse, certified as medically necessary, in accordance with a plan of care. N.J.A.C. 10:60-1.2. 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. N.J.A.C. 10:60-3.8 puts limitations on PCA services to prevent the duplication of services. Specifically, PCA services are limited to 40 hours per week with additional services to be provided based on exceptional circumstances. N.J.A.C. 10:60-3.8(g).

Petitioner was allotted eighty-six hours of PCA services during his transition from a nursing facility to his parent's home. Thereafter, Amerigroup's nurse performed an

assessment of Petitioner and determined that his medical needs warranted 52 hours of PCA services each week. In addition to weekly PCA services, Petitioner receives fifty-six hours of weekly PDN services. Pursuant to N.J.A.C. 10:60-6.3(b)(2), a live-in, trained, primary adult caregiver must provide a minimum of eight hours of hands on care during every twenty-four hour period.

Currently, Petitioner's personal care assistant is with him daily from 7:00 a.m. to 7:00 p.m. daily. Petitioner's private duty nurse is with him from 11:00 p.m. to 7:00 a.m. daily. Assuming Petitioner's caregiver is providing the required eight hours of daily care, Petitioner is receiving round the clock care from his caregiver, the PCA and the PDN combined, even at the newly assessed 52 hours per week of PCA services.<sup>1</sup> At the prior assessment of 86 hours per week, Petitioner is receiving 140 hours of weekly PCA and PDN services, or 20 hours a day, without any assistance from Petitioner's primary caregiver. While N.J.A.C. 10:60-6.3 references only PDN services, the two cannot be viewed in isolation where, as is the case here, Petitioner is receiving both PCA and PDN services. See T.M. v. Division of Med. Assistance & Health Servs., 2019 N.J. Super. Unpub. LEXIS 2891 (App. Div. Feb. 4, 2019)

Additionally, I am not persuaded by Petitioner's argument that Amerigroup must continue to provide the same amount of PCA hours given in a prior assessment if there has been no change in the Petitioner's medical condition.<sup>2</sup> Once PCA services are authorized, a nursing reassessment is performed every six months, or more frequently if

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<sup>1</sup> Although not directly before me, J.F.'s testimony that her husband, who attending the hearing but did not testify, has a flexible work schedule and is never more than an hour away from home raises the question whether or not Petitioner's father is fulfilling the eight hour a day caregiving requirement for PDN services. (T 127)

<sup>2</sup> I am troubled that the ALJ characterized as not credible and dismissed the testimony of Amerigroup's nurse, who personally assessed Petitioner at home pursuant to the PCA tool, yet found credible the testimony of J.F., who is not home and does not care for Petitioner during the hours at issue, and of Petitioner's primary care physician who was not Petitioner's doctor at the time of the assessments, has never observed Petitioner at home or performed an assessment using the PCA tool. I am also bothered that Petitioner's doctor was offered and accepted as an expert, and yet, her area of expertise was never identified.

warranted, to reevaluate the individual's need for continued care. N.J.A.C. 10:60-3.5(a)3. Indeed, the Appellate Division has upheld the termination of PCA services, noting that a reassessment is required at least once every six months to evaluate an individual's need for continued PCA services. As a result, the Appellate Court found that "an individual who has received approval for eligible services is not thereby entitled to rely ad infinitum on the initial approval and remains subject to . . . reevaluation at least once every six months". J.R. v. Div. of Med. Assist. & Health Servs. and Div. of Disability Servs., No. A-0648-14 (App. Div. April 18, 2016). (Op. at 9)

I am concerned that the assessment being appealed was conducted in September 2016, that this matter was transmitted in December 2016 and that the first hearing date did not occur until November 2017. I am also troubled by the fact that the second hearing was held six months later in May 2018 and that the record was not closed until November 5, 2018. A more than two year delay, with continued benefits in dispute, is unacceptable and makes it difficult, if not impossible, to correctly determine the amount of services Petitioner currently requires.


Due to the continuation of benefits pending the fair hearing as well as the delay from the last hearing date to this Final Agency Decision, Petitioner's current status must be reassessed. At this point Petitioner will have been receiving 86 hours of weekly PCA services for more than two years.

THEREFORE, it is on this 14<sup>th</sup> day of FEBRUARY 2019,

ORDERED:

That given the passage of time and continuation of benefits, the issue regarding the amount of PCA hours provided by Amerigroup is dismissed as moot, and

That the Initial Decision is hereby REVERSED and Amerigroup shall assess Petitioner's current condition within four weeks of this decision to determine the present medical necessity for PCA services in accordance with T.M. v. Division of Med. Assistance & Health Servs., 2019 N.J. Super. Unpub. LEXIS 2891 (App. Div. Feb. 4, 2019)



Meghan Davey, Director  
Division of Medical Assistance  
and Health Services