



**State of New Jersey
Department of Human Services
Division of Medical Assistance and Health Services**

P.O. BOX 712
TRENTON NJ 08625-0712

PHILIP D. MURPHY
Governor

Sheila Y. Oliver
Lt. Governor

Carole Johnson
Commissioner

Meghan Davey
Director

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

J.M.,

PETITIONER,

v.

HORIZON NJ HEALTH,

RESPONDENT.

:
:
:
:
:
:
:
:
:
:

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 3671-2018

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the OAL case file, the document in evidence and the Initial Decision. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to file a Final Decision is January 24, 2019 in accordance with an Order of Extension.

This matter concerns the termination of Petitioner's physical therapy (PT) sessions after a review by Horizon NJ Health as the Managed Care Organization (MCo) that manages his Medicaid benefits. Petitioner has been receiving PT services on and

off since 2014. The services are related to an injury that occurred in 2005 followed by spinal fusion surgery in 2006. ID at 2. On December 28, 2017 Horizon NJ Health determined that the physical therapy was no longer medically necessary. This decision was upheld on February 23, 2018 after an internal appeal. Petitioner appealed for a Medicaid fair hearing. For the reasons that follow, I hereby ADOPT the Initial Decision as to the determination that a current appeal of PT services is not governed by either collateral estoppel or res judicata as a result of a 2016 decision regarding Petitioner's PT services at that time. If Petitioner's argument were applied to a contrary prior decision where the services were denied, those services would never be permitted under the same argument. Rather as the ALJ pointed out the determination in 2016 was based on his medical condition at that time. It is baseless to argue that a prior decision on an individual's ability to receive services would preclude any change to that decision based on future circumstances. As such, that argument was appropriately denied.

However, based on my review of the record and for the reasons set forth below, I hereby REVERSE the Initial Decision and uphold the denial of PT services.

Horizon NJ Health, as part of its periodic review, denied the request for PT services, determining that there was no acute exacerbation of an old injury and the sessions were not medically necessary. The basis of this denial was Horizon's policy 31C.276 entitled Physical Therapy and Occupational Therapy Services, Long Term. R-1 and R-18. Roselle Perrucci testified as an expert in physical therapy about the denial. Additionally, an independent peer review was performed by Dr. Arvind Baliga. As Ms Perrucci explained a review of Petitioner's PT records including the Oswestry Disability Index (ODI) led both clinicians to conclude that Petitioner's PT was no longer medically necessary. Petitioner's treatments had essentially not changed in "the type or intensity

of the exercises.” ID at 6. Moreover, the treatment notes by Petitioner’s therapist observed that Petitioner claimed to be unable “to tolerate prolonged activities that last longer than ten minutes despite his ability to perform his therapeutic exercise program for an hour.” Id at 6 and J-3.

N.J.A.C. 10:74-1.4 provides the definition of “medically necessary services” as follows:

“Medically necessary services” means services or supplies necessary to prevent, diagnose, correct, prevent the worsening of, alleviate, ameliorate, or cure a physical or mental illness or condition; to maintain health; to prevent the onset of an illness, condition, or disability; to prevent or treat a condition that endangers life or causes suffering or pain or results in illness or infirmity; to prevent the deterioration of a condition; to promote the development or maintenance of maximal functioning capacity in performing daily activities, taking into account both the functional capacity of the individual and those functional capacities that are appropriate to individuals of the same age; to prevent or treat a condition that threatens to cause or aggravate a handicap or cause physical deformity or malfunction, and there is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the enrollee. The services provided, as well as the treatment, the type of provider and the setting, are reflective of the level of services that can be safely provided, are consistent with the diagnosis of the condition and appropriate to the specific medical needs of the enrollee and not solely for the convenience of the enrollee or provider of service and in accordance with standards of good medical practice and generally recognized by the medical scientific community as effective. Course of treatment may include mere observation or, where appropriate, no treatment at all. Experimental services or services generally regarded by the medical profession as unacceptable treatment are deemed not medically necessary. Medically necessary services provided are based on peer-reviewed publications, expert pediatric, psychiatric, and medical opinion, and medical/pediatric community acceptance. In the case of pediatric enrollees, this definition applies, with the additional criteria that the services, including those found to be needed

by a child as a result of a comprehensive screening visit or an inter-periodic encounter, whether or not they are ordinarily covered services for all other Medicaid enrollees, are appropriate for the age and health status of the individual and that the service will aid the overall physical and mental growth and development of the individual and the service will assist in achieving or maintaining functional capacity.

While the Initial Decision states that Horizon failed to explain the reliance by both its experts that there must be a difference exceeding 10% in between the two Oswestry Disability Index (ODI) outcomes for a minimal clinically significant difference (MCID), the Horizon policy links to the ODI in its reference to the Rehabilitation Measures Database. R-1. The ODI, a publically available form, states the “[m]inimum detectable change (90% confidence): 10% points (change of less than this may be attributable to error in the measurement).” See download available at <https://www.sralab.org/rehabilitation-measures/oswestry-disability-index>. Petitioner’s change in the ODI after six sessions was 6% which does not meet the 10% threshold to indicate change. It was more than reasonable to Ms. Perrucci to discount the reported 54% ODI score after two sessions in January 2018, when Petitioner’s therapy had been denied as the reduction is 8% or again less than the 10% threshold.

The repeated statement that Petitioner requires skilled PT therapy to restore prior level of function is not as persuasive as the statements by the therapist that changed from session to session. As such the reliance by the Initial Decision on the two subsequent PT sessions after the denial letter from Horizon, is misplaced as it fails to recognize that the physical therapist noted the inconsistencies with Petitioner’s self-reporting about his functionality. The assessment for January 15, 2018 states Petitioner “reports functional ability has increased with PT, however the reports do not cross over

into OMT". P-18. The notes for the January 3, 2018 session restates, Petitioner's complaint from the December 18, 2017 recertification that he is unable "to tolerate prolonged activity" more than then minutes did not align with his observed ability to perform the therapeutic exercise program for an hour." J-3.

Rather the Flow Sheets from these therapy sessions show that as of December 18, 2017 he had minimally progressed to higher levels or additional therapies. There was no carryover of improvement. Petitioner shows no increase in the levels of the prescribed activities except for two on December 4, 2017. Most of the therapies were added as of November 1, 2017 except for two that were added on November 27, 2017. R-18.

Ms. Perrucci's conclusion that a home exercise plan or one done at a gym would be more appropriate does appear to be borne out by the Initial Decision's findings around Petitioner's testimony. ID at 8 and 11. Petitioner was found to be unpersuasive in his argument that he required PT as he "cannot engage in a home exercise program" due to his inability to access exercise equipment, and his propensity to "over-train" is not supported by any competent evidence. The definition of a medically necessary service requires a finding "there is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the enrollee." Also, the service cannot be "solely for the convenience of the enrollee". Such a home exercise program should be part of Petitioner's discharge plan from PT.

THEREFORE, it is on this ^{24th} day of JANUARY 2019,

ORDERED:

That the Initial Decision is hereby ADOPTED with regard to the finding that res judicata and collateral estoppel are misplaced and properly denied.

That the Initial Decision is hereby REVERSED with regard to the denial of Physical Therapy and that Horizon's denial for physical therapy is upheld.


Meghan Davey, Director
Division of Medical Assistance
and Health Services