



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

T.B.	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
AMERIGROUP	:	OAL DKT. NO. HMA 17615-18
	:	
RESPONDENT.	:	

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision and the documents in evidence. Neither party filed exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is May 28, 2019 in accordance with N.J.S.A. 52:14B-10 which requires an Agency Head to adopt, reject or modify the Initial Decision within 45 days of receipt. The Initial Decision was received on April 10, 2019.

This matter arises from Amerigroup's reduction of Personal Care Assistance (PCA) services from 40 hours per week to 29 hours per week. PCA services are non-emergency, health related tasks to help individuals with activities of daily living and with

household duties essential to the individual's health and comfort, such as bathing, dressing, meal preparation and light housekeeping. 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.

Petitioner was previously approved for 40 hours of weekly PCA services. He elected to receive those services through the Personal Preference Program (PPP) which permits the eligible recipient to hire a caregiver of their choosing, in this case his mother. On August 25, 2018, Amerigroup conducted a routine six month PCA assessment of Petitioner which resulted in a change in the amount of PCA services in several categories including: cognitive impairment, ambulation, transferring, feeding, toileting, personal hygiene and dressing. As a result, Petitioner's PCA services were reduced to 29 hours per week.

The category of cognitive impairment was reduced from 180 minutes to 120 minutes per week. The notes in both assessments state that Petitioner needs constant supervision, guidance, assistance, redirections and reminders. This is more in line with the moderate cognitive impairment assessment. Therefore I FIND that the Petitioner's assessment was appropriately reduced from 180 minutes to 120 minutes.

The categories of ambulation and transferring were reduced to zero. Although the previous PCA assessment found Petitioner only required supervision rather than maximum assistance, it allotted Petitioner time beyond that allowed for supervision without explanation specific to the needs of that category. Moreover, Petitioner's parents did not dispute that he could ambulate independently, nor did they provide any medical documentation to contradict the PCA assessment. Rather, Petitioner's parents seem to suggest that he requires constant supervision. However, PCA services are not approved or authorized when the purpose of the request is to provide supervision or

companionship. N.J.A.C. 10:60-3.8(c). Accordingly, I FIND the Petitioner's PCA services in these categories were appropriately reduced to zero.

The category of feeding was reduced from 320 minutes per week to 180 minutes per week. In both assessments Petitioner was determined to only require supervision and cueing. However, in the first assessment, Petitioner was allotted the maximum amount of time for someone who needs extensive assistance. The August 2018 assessment reduced the amount of time per meal and the amount of meals per week. Since Petitioner was never deemed to require maximum assistance, and because Petitioner attends a medical day care program five days a week, this reduction was appropriate. However, I FIND the number of meals per week should be adjusted to reflect that Petitioner receives five meals per week at the medical day care program, resulting in an assessment of fifteen minutes per meal, sixteen meals per week.

The category of toileting was reduced from 630 minutes per week to 210 minutes per week. The August 2018 assessment found that Petitioner needed extensive assistance in this area but cited only occasional incontinence. The prior assessment found that Petitioner needed extensive assistance, but in the justification noted that Petitioner was independent in this area. Consequently, the prior assessment of this category is less reliable than the current assessment. Accordingly, I FIND the PCA services were appropriately reduced to 210 minutes per week.

In the categories of personal hygiene and dressing, the August 2018 assessment actually increased the amount of PCA services from 105 to 140 minutes per week. Again, the August 2018 assessment provided justifications for this increase where the prior assessment failed to justify the needs for the amount of services with any specificity. As a result, I FIND that the August 2018 assessment correctly increased the amount of services for dressing and personal hygiene.

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. Petitioner should be provided with the number of hours that are medically necessary. However, if too many hours were awarded in error, such an error should not be continued simply because that was the amount of hours awarded in the past.

Moreover, once PCA services are authorized, a nursing reassessment is performed every six 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. 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).

After hearing the testimony of witnesses, the ALJ found all to be credible but gave more weight to Petitioner's parents' testimony. The fact-finder's assessment of the credibility of witnesses is entitled to deference by the reviewing agency head. Clowes v. Terminix, 109 N.J. 577 (1988). However, N.J.A.C. 1:1-15.5(b), the **residuam 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." No such evidence was presented in this matter. On its face, the August 2018 assessment provided more specific and more consistent justifications for the amount of PCA hours awarded than the February 2018 assessment. Moreover, the assessment is


consistent with Petitioner's father's testimony and Dr. Ravi Patel's report (R2) that the Petitioner ambulates independently but needs supervision. As previously stated, supervision and companionship are contrary to the purpose of the PCA program, which is intended to provide medically necessary assistance with specific health related tasks. See N.J.A.C. 10:60-3.8(c). Here, Petitioner has not provided any documentation to show that 40 hours of PCA services are medically necessary.

THEREFORE, it is on this <sup>24<sup>th</sup></sup> day of MAY 2019,

ORDERED:

That the Initial Decision is hereby REVERSED, and

That Amerigroup's August 2018 assessment of Petitioner is upheld with the exception of the feeding category which should be increased from twelve meals per week to sixteen meals per week.

  
Meghan Davey, Director  
Division of Medical Assistance  
and Health Services