



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

PO Box 712

TRENTON, NJ 08625-0712

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

CAROLE JOHNSON  
*Commissioner*

JENNIFER LANGER JACOBS  
*Assistant Commissioner*

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

E.P., :  
 :  
 :  
 PETITIONER, : **ADMINISTRATIVE ACTION**  
 :  
 :  
 v. : **FINAL AGENCY DECISION**  
 :  
 :  
 : **OAL DKT. NO. HMA 16489-19**  
 UNITED HEALTHCARE, :  
 :  
 :  
 :  
 RESPONDENT. :

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence, and the contents of the Office of Administrative Law (OAL) case file. Neither party filed exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is February 14, 2020 in accordance with the December 5, 2019 order of the New Jersey Superior Court, Appellate Division.

This matter arises from United Healthcare's (United) March 23, 2017 determination reducing Petitioner's Personal Care Assistance (PCA) services. PCA services are non-emergency, health related tasks to help individuals with activities of daily living (ADL) and with household duties essential to the individual's health and comfort, such as bathing,

dressing, meal preparation and light housekeeping.<sup>1</sup> 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. In November 2015, Petitioner was approved for twenty-two hours of PCA services per week. She 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 her mother, E.P. On March 1, 2017, United conducted an assessment of Petitioner which resulted in a change in the amount of PCA services in several categories including: ambulation, transferring, bathing, feeding, toileting and dressing.

United employee Gianna Potts, MSN, RN, conducted both the November 2015 and March 2017 assessments.<sup>2</sup> Using the State-approved PCA Beneficiary Assessment Tool, Potts had a face-to-face visit with Petitioner, communicated with Petitioner's father, considered several categories related to her functional limitations and determined the amount of time Petitioner needed for each category. Based on this assessment, the nurse determined that the needed services could be provided within 8 hours per week. Unlike the Administrative Law Judge (ALJ), I FIND the documentary evidence in the record supports the reduction of PCA services.

At the time of the March 2017 assessment, Petitioner was 32 years old and living at home with her parents and sister. She has Down's syndrome, psoriasis, heart valve prolapse and spinal cord injuries. Petitioner's father was present at the assessment. In five of the six categories reduced, he communicated to Potts that Petitioner was independent or nearly independent in her ability to perform the ADL. In the category of ambulation, "Dad states member is doing well ambulating independently..." In the category

---

<sup>1</sup> Although not germane to the issue here, the Initial Decision incorrectly states that PCA services are available in the community and in facilities. PCA services are generally not available in facilities where those services are already provided by the facility staff. N.J.A.C.10:60-3.8.

<sup>2</sup> Potts, who conducted the March 2017 assessment almost three years prior to the OAL hearing, is longer employed by United. Dr. Judy Wright, United's Medical Director, who has been employed by United since 2012, testified at the hearing. As medical director, she manages United nurses who review requests for Managed Long Term Services and Supports (MLTSS), and reviews assessments that result in a reduction of services.

of transfer, "Member is able to transfer independently, per dad." In the category of bathing, "Dad states besides needing cuing to initiate the task, member has become independent with bathing and is able to complete this task on her own." In the category of feeding, "Dad states member is able to feed herself independently." In the category of dressing, "Member is able to select clothes and sticks to what she is comfortable in...they buy clothes that member is able to put on, on her own...typically does ok with dressing herself and will only need assistance to straighten out or if it is something she is not familiar with."

Petitioner's father did not testify at the hearing to either clarify his statements or object to the characterization thereof. Instead, Petitioner's mother, E.P., testified at the hearing. There is no indication that E.P. was present at the March 1, 2017 assessment. Yet, the Initial Decision gave considerable weight to her testimony. Additionally, the Initial Decision characterizes her testimony as pertaining more to the Petitioner's current needs. For example, with regard to feeding, E.P. testified that Petitioner "still" needs to be supervised when she eats because she will overeat. ID at 8. With regard to toileting and incontinence, E.P. testified that Petitioner "now" has these episodes every day. ID at 9. In the category of ambulation, E.P. testified that Petitioner walks slowly but independently and needs several breaks. ID at 9. In the category of bathing, E.P. testified that Petitioner needs some help but is not completely dependent. ID at 10. With regard to meal preparation, housekeeping and laundry, E.P. testified to what Petitioner needs now that she is living in her own apartment. ID at 10. The issue before the court is the appropriateness of the March 2017 assessment of Petitioner's needs, and not Petitioner's current specific needs. It is counterintuitive to consider E.P.'s testimony regarding her daughter's current needs, and dismiss the absence of Petitioner's father whose statements were contemporaneous with the March 2017 assessment. ID at 7.

Unquestionably, the Petitioner should be provided with the number of hours that were medically necessary at the time of the March 2017 assessment. 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. This does not necessarily require United to show that Petitioner's condition has improved, only that the award of hours is supported by the evidence. B.F. v. United Healthcare, No. A-5226-17T2 (App. Div. November 12, 2019). Potts is no longer employed by United. Neither E.P. nor Dr. Wright, the only people to testify at the hearing, was present at the March 2017 assessment. Petitioner's father, who was present and whose statements affected the award of hours, elected not to testify at the hearing. Consequently, we must rely on the PCA tool and Potts written justifications for the award of 8 weekly PCA hours to determine the number of hours medically necessary.

I disagree with the ALJ that Potts' explanations for the award of hours fail to support the clinical evaluation. As stated above, in most of the categories, Petitioner's father indicated she was independent, which was a change from the prior assessment two years earlier. Furthermore, the justifications and scoring accounted for Petitioner's need for some assistance in these categories. For example, in the category of ambulation, Potts notes that "Dad states member has been doing well ambulating independently, however gets tired easily...continues to require assistance descending stairs and outside the home..." As a result, the score was not reduced to zero, but was reduced by 35 minutes to 70 minutes per week. This new score accounts for Petitioner's ability to ambulate independently the majority of the time, but not all of the time. This is also consistent with E.P.'s testimony that Petitioner ambulates slowly but mostly independently. I FIND that the award of 70 weekly minutes of PCA services for ambulating is supported by the record.

The same is true for bathing, where Potts notes, "Dad states besides needing cuing to initiate the task, member has become independent with bathing and is able to complete this task on her own. 5min/episode allotted for cuing as dad states member needs multiple reminders to start task." As a result, the score was reduced to account for the need expressed by Petitioner's father. I FIND that the award of 30 weekly minutes of PCA services for bathing is supported by the record.

In the category of dressing, Potts notes that "Dad states they buy clothes the member is able to put on, on her own, which are usually void of zippers, buttons, snaps or ties." There is no indication from the notes or E.P.'s testimony that Petitioner is unable to dress herself. What seems to be required is an occasional cuing to put on additional layers when the weather is colder or to change her clothes if Petitioner has had an accident and some assistance if Petitioner's clothes are unfamiliar to her. The prior assessment did not note that Petitioner was able to dress herself independently. I FIND that the award of 70 weekly minutes of PCA services for dressing is supported by the record.

With regard to feeding, Potts notes that "Dad states member is able to feed herself independently." In the prior assessment, Potts noted that Petitioner required supervision while eating. In both assessments, Potts notes that Petitioner hoards food and has a tendency to overeat to the point of vomiting. On the PCA tool, the category of feeding is described as "the process of getting food into the digestive system." Any measures taken to control portions or store food would not be included in this category. As E.P. testified, when Petitioner was living at home they would have to lock the pantry and refrigerator because Petitioner would eat anything that "was not locked down." ID at 10. I have no doubt that this is true, but it does not require additional PCA time to complete the task of feeding Petitioner. Those tasks are included in the meal prep category. Since Petitioner lived at home and ate the same meals as the rest of the family, no minutes would be awarded for meal planning, storing, preparing, serving or cleaning up. I FIND that the award of 0 weekly minutes of PCA services for feeding is supported by the record.

With regard to transferring, Potts notes that "Member is able to transfer independently per Dad. No concerns at this time." I FIND that the award of 0 weekly minutes of PCA services for transferring is supported by the record.

There is one category, however, in which the reduction of services is not supported by the assessment. In the category of toileting, the justification of need in Potts' November 2015 and March 2017 assessments are almost identical. Yet, the services are reduced in

half to sixty minutes per week. There is no sufficient explanation for this reduction in the record, and I FIND that these services should have remained at 120 minutes per week.

The Initial Decision seems to gloss over the undisputed information provided by Petitioner's father and finds that there is no significant change in the Petitioner's condition warranting a reduction of hours. There is no requirement that United 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. 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.<sup>3</sup> 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).

Based on her assessment of Petitioner's particular needs and circumstances, Potts approved Petitioner for 8 hours of weekly PCA services. To support her finding, Potts provided written justifications for each category of the PCA tool. Petitioner's father's statements that she could perform most of her ADLs independently are undisputed. If, as the ALJ finds, these statements insufficiently distinguish the 2015 and 2017 assessments, the 2015 award of 22 weekly PCA hours for an individual who can independently complete these tasks is problematic; not the 2017 assessment.

I find that the credible evidence in the record supports Petitioner's need for 9 hours of weekly PCA services. This is consistent with the amount of hours assessed during

---

<sup>3</sup> When the November 2015 and March 2017 assessments were performed, the regulation required a six-month reassessment. As of September 17, 2018, the regulation requires a yearly reassessment. See N.J.R. 1992(b) (September 17, 2018).

Petitioner's subsequent evaluation in September 2017. There is no indication that this assessment was appealed and presumably Petitioner has continued to receive 9 hours of weekly PCA services since September 2017. I am concerned that Petitioner has not been reassessed for more than two years. In that time, Petitioner's living arrangements have changed and so too may have her needs.<sup>4</sup>

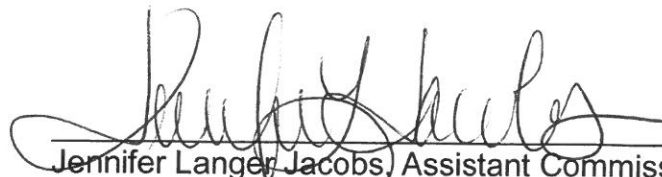
THEREFORE, it is on this 10<sup>th</sup> day of FEBRUARY 2020,

ORDERED:

That the Initial Decision is REVERSED; and

That United's March 2017 assessment of Petitioner is upheld with the exception of the toileting category which should be increased to 120 weekly minutes; and

That given the passage of time since Petitioner's last assessment in January 2018, United shall assess Petitioner's current condition within four weeks of this decision to determine the present medical necessity for PCA services and issue a new determination notice with appeal rights.

  
Jennifer Langer Jacobs, Assistant Commissioner  
Division of Medical Assistance  
and Health Services

<sup>4</sup> E.P. testified that Petitioner has been living in supportive housing since December 2017. ID at 8.