

pendency of the hearing, Horizon conducted three more PCA assessments on May 17, 2018, May 2, 2019 and February 21, 2020. All three assessments resulted in determinations that Petitioner required approximately forty PCA hours per week. Petitioner did not appeal any of these assessments. She has been receiving forty weekly PCA hours since June 2017. The only matter appealed and properly before the court is the appropriateness of the June 2017 PCA assessment. See N.J.S.A. 52:14F-7(a); N.J.A.C. 1:1-3.2(a); N.J.A.C. 1:1-3.1, and N.J.S.A. 30:4D-4.

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. 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. 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; 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).

On June 1, 2017, Horizon's Karen Watson, R.N., performed a PCA assessment of Petitioner and determined that she required 40 hours per week. The PCA Nursing Assessment Tool (PCA tool) shows that Watson scored Petitioner's needs at the maximum amount for the following ADLs: transferring, bathing, positioning, toileting, personal hygiene, and dressing. For the ADL of feeding, Watson scored Petitioner as needing some assistance as she needed help cutting her food but was able to feed herself. Finally, for the ADL of ambulation, Watson scored Petitioner as needing no assistance because she was non-ambulatory. With regard to Petitioner's IADLs, Watson scored her as needing maximum assistance with housekeeping, bed linen changes, shopping and laundry. With regard to meal preparation, Petitioner was determined unable to prepare her own meals and assessed 20 minutes for dinner and ten minutes each for breakfast and lunch. Watson did not note

any exceptional circumstance that would warrant PCA hours over forty hours per week.

Petitioner argues that she requires 88.6 hours of weekly PCA services. In support of her argument, Petitioner and her father, who also serves as her caregiver, created their own chart and explanation of personal care assistant need. (P-1). They also offered the April 13, 2017 nursing home discharge papers and three office visit progress notes dated in August, November and December 2020. Finally, Petitioner, her father, and Amanda Davis, APN all testified at the hearing. All were found credible by the ALJ.

As previously stated, the only determination appealed and transmitted to the OAL concerns the June 2017 PCA assessment. With the exception of the April 13, 2017 discharge papers, the documents and witness testimony offered by Petitioner address circumstances subsequent to the June 2017 PCA assessment. Amanda Davis, APN, did not begin to care for the Petitioner until 2018. Petitioner's father testified that he did not begin to care for her full-time until his retirement.¹ He described a typical day for Petitioner as of the date of the hearing, not in June 2017. Likewise, Petitioner's testimony addressed her current medical conditions as she explained recently having to delay surgery and experiencing her medical conditions worsening. In the same vein, the explanation of PCA need chart, drafted by Petitioner and her father for the hearing, addresses Petitioner's perceived current need.

Conversely, the April 13, 2017 discharge papers support the June 2017 PCA assessment. The discharge papers indicate that Petitioner needed extensive assistance, but not total dependence, in positioning, transferring, dressing, toilet use, personal hygiene and bathing. Nurse Watson assessed Petitioner at the maximum in all these categories. The discharge papers also indicate that the Petitioner needed only supervision or oversight when eating which is consistent with Nurse Watson's assessment for limited assistance in this category. Finally, with regard to ambulation, the discharge papers are again consistent with Nurse Watson's finding that Petitioner was mostly non-ambulatory. Nothing in the discharge

¹ The record does not provide the date of retirement.

papers indicated an exceptional circumstance requiring more than forty hours per week.²

Moreover, I note that although the ALJ was critical of Nurse Watson's evaluation and found Petitioner's witnesses credible, she reached her own assessment of 65.18 weekly PCA hours without the benefit of witnessing the Petitioner perform her ADLs or reviewing medical records contemporaneous with the June 2017 assessment. While Petitioner's, and witness, testimony may be credible with regard to her current need, it does not address the assessment currently before the court. You simply cannot compare a 2017 assessment performed by a registered nurse, and supported by 2017 discharge papers, with a 2021 personal assessment of need.³ Therefore, I FIND that the relevant evidence in the record supports Horizon's June 2017 assessment of forty PCA hours per week.

That said, while there are limitations on PCA services to prevent duplication of services, additional hours, above forty, may be provided based on exceptional circumstances. N.J.A.C.10:60-3.8. N.J.A.C. 10:60-3.8(g). Unquestionably, Petitioner should be provided with the number of hours that are necessary to meet her particular needs. Accordingly, the State approved PCA tool allows for additional time where there is a justified need, supported by a nurse's observations and medical records, for a particular service. I am concerned that the assessment being appealed was conducted in June 2017, that this matter was transmitted in March 2018, the first hearing date did not occur until January 2021 and the record closed May 12, 2021. An almost four-year delay since the appealed assessment and eighteen months since the February 2020 assessment, makes it difficult, if not impossible, to correctly determine the amount of services Petitioner currently requires. Based on the testimony and evidence in the record, Petitioner should be re-assessed.

THEREFORE, it is on this 19th day of OCTOBER 2021,


² Although Petitioner claims to have received fifty hours upon discharge from the nursing home, I cannot find reference to that anywhere in the record.

³ I note that although the court recognized Amanda Davis as both a fact and expert witness with regard to Petitioner's medical conditions and need, she did not participate in the tabulation of need chart. (P-1).

ORDERED:

That the Initial Decision is hereby REVERSED and Horizon's determination that Petitioner was entitled to 40 PCA hours per week in June 2017 is upheld; and

That Horizon shall assess Petitioner's current condition within four weeks of this decision to determine the present medical necessity for PCA services and notify her accordingly.



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