



**State of New Jersey**

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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VALERIE HARR  
*Director*

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

D.W.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE  
AND HEALTH SERVICES AND  
DIVISION OF DISABILITY SERVICES,  
RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

ON REMAND

OAL DKT. NO. HMA 2324-12

By Final Agency Decision dated August 6, 2013, I reversed the recommended decision of the Administrative Law Judge and affirmed the reduction of Petitioner's Personal Care Assistant services (PCA) from 40 hours to 25 hours per week. By opinion dated December 15, 2014, the Appellate Division vacated that decision and remanded to matter to the agency for reconsideration of the reduction in hours in light of Petitioner's current medical condition and the fact that she was provided with 40 hours of services per week

condition and the fact that she was provided with 40 hours of services per week in 2009. After reviewing the entire record in this matter, my decision to affirm the reduction from 40 to 25 hours of weekly PCA services stands.

As explained more fully below, my decision that a reduction of services is warranted is supported by the fact that Petitioner was provided with funding through the Personal Preference Program for 40 hours of PCA services per week. Nevertheless, Petitioner structured her budget and chose to employ an aide with a higher hourly rate such that she receives only 30 hours of assistance per week. For this reason and based on the results of two separate assessments of Petitioner's current condition and care needs, I find ample evidence in this record to justify the reduction in hours.

Petitioner, D.W., is a 48 year-old woman with Down's Syndrome, Type 1 diabetes, lupus and hypertension. In addition to receiving 40 hours of PCA services through the Personal Preference Program, D.W. also receives 50 hours of PCA services per week through the Division of Developmental Disabilities and attends an Adult Medical Day Care, paid for by her HMO, each weekday from 9:00 a.m. through 2:30 p.m. D.W. began receiving PCA benefits through the Personal Preference Program in January 2009. The Personal Preference Program, administered by the Division of Disability Services, allows elderly and disabled Medicaid recipients to direct and manage their PCA services. With a monthly cash allowance to cover 40 hours of PCA services, D.W. opted instead to hire a more skilled caregiver who charged a higher hourly rate, which resulted in a reduction in hours to 30 per week. In other words, because the personal care aide selected by D.W. receives a higher hourly wage than the amount upon

which the 2009 cash grant was based, D.W. has actually been receiving 30 hours, rather than 40 hours, of weekly PCA services.

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.

On September 14, 2012, D.W.'s HMO, Horizon NJ Health, conducted a regularly scheduled assessment. Using the PCA assessment tool, the HMO nurse considered ten categories of activities of daily living and assigned numerical scores based on D.W.'s need for assistance. The HMO nurse also completed a comment section explaining D.W.'s personal circumstances and individual needs. The nurse specifically noted that D.W. tends to wander and must be watched and supervised. However, because the use of PCA services for supervision is specifically precluded by the regulations and because D.W. attends medical day care during the week and receives additional PCA hours from DDD, Horizon recommended that D.W.'s services be reduced to 20 hours per week.

Following a request for a fair hearing to challenge the reduction, Sandra Surujballi, R.N., a nurse with the Division of Disability Services, performed another assessment of D.W. in her home. Ms. Surujballi observed D.W.'s ability to perform activities of daily living and discussed her level of independence both with D.W. and with her sister, P.R., with whom she lives. Nurse Surujballi



completed the PCA assessment tool, which includes consideration of ten identified areas of activities of daily living. Nurse Surujballi also completed a comments section on the assessment tool, setting forth the services she receives from the Division of Developmental Disabilities (50 hours of PCA services per week) and from Horizon NJ Health (adult day care from 9:30 a.m. to 2:00 p.m., five days per week). On the accompanying Beneficiary Observation and Evaluation form, Nurse Surujballi observed that D.W. "ambulates independently," that she does not use any devices or durable medical equipment, and that she is alert and oriented to time, person, and place. On this form, Nurse Surujballi also summarized her findings as to D.W.'s level of independence with regard to twenty fields addressing personal care and household needs and listed D.W.'s prescribed medications. Although the PCA assessment tool yielded a numerical score of 18, Nurse Surujballi considered the totality of D.W.'s circumstances and recommended that she receive 25 hours of PCA services per week. Based upon her evaluation of D.W., Nurse Surujballi determined that a personal care assistant could meet D.W.'s needs with activities of daily living by providing 3.5 hours of services each day, Sunday through Friday, and 4 hours of services on Saturday. This determination took into account all of D.W.'s needs, the assistance she already receives from her sister, with whom she lives, as well as her PCA services through the Division of Developmental Disabilities and adult day care through her HMO.

In the Initial Decision, the ALJ finds that Petitioner's medical condition has deteriorated and that she needs "a skilled level of care that requires a skilled caregiver paid at a higher rate than the standard rate." Initial Decision at page

14. I disagree. The regulations do not include skilled nursing care in the health-related duties a personal care assistant may perform. See N.J.A.C. 10:60-3.3(a)(3). Thus, any deterioration in D.W.'s medical condition that requires skilled nursing care does not establish a necessity for additional PCA services. In conducting the assessment on January 1, 2013, Nurse Surujballi was well aware of D.W.'s medical condition and need for skilled nursing care. The effects of D.W.'s medical needs on her independence with regard to activities of daily living are included in the PCA assessment tool score and in Nurse Surujballi's recommendation of 25 hours per week. Further, as I explained above, D.W.'s claim that she requires 40 hours of PCA services is undermined by the fact that she has decided to pay her caregiver at a higher rate and obtain only 30 hours of actual assistance per week. That D.W. has sought only the 30 hours of actual assistance for which she pays clearly demonstrates that she does not require 40 hours of weekly assistance. Additional hours cannot be authorized to accommodate a higher salary. Unquestionably, the client should be provided with the number of hours that are medically necessary. In this case, that number is 25 hours per week. How the client chooses to spend the amount budgeted for those hours are left to his or her discretion.

Finally, I am persuaded by the fact that no evidence was presented suggesting that any needed service or task cannot be performed within 25 hours per week. Moreover, Petitioner provided no evidence or explanation as to why this level of PCA services is insufficient with respect to her care needs. If the necessary personal care and household tasks can be accomplished within 25 hours per week, any additional hours would only be used for supervision or

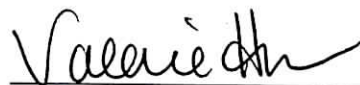
companionship which is not an authorized use of the service. See N.J.A.C. 10:60-3.8(c). This would be contrary to the purpose of the PCA program, which is intended to provide medically necessary assistance with specific health related tasks.

D.W's practice of paying her caregiver at a higher rate so that she receives only 30 hours of care clearly demonstrates that she does not require 40 hours of care. This fact, coupled with the thorough assessment performed by Nurse Surujballi, supports the decision to reduce Petitioner's PCA services.

THEREFORE, it is on this *19<sup>th</sup>* day of December 2014,

ORDERED:

That the Initial Decision reversing the reduction of Petitioner's PCA services is REVERSED. Petitioner shall receive 25 hours of weekly PCA services.

A handwritten signature in cursive script, appearing to read "Valerie J. Harr", is written over a horizontal line.

Valerie J. Harr, Director  
Division of Medical Assistance  
and Health Services