



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. HMA 16677-14

AGENCY DKT. NO. 101902970

C.S.,

Petitioner,

v.

UNITED HEALTHCARE,

Respondent.

August Lincoln Pozgay, Esq., for petitioner (Disability Rights of New Jersey,
attorney)

Isaac A. Hof, Esq., for respondent (Stradley Ronon, attorneys)

Record Closed: May 27, 2015

Decided: June 4, 2015

BEFORE TIFFANY M. WILLIAMS, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The petitioner, C.S., appealed the respondent, United Healthcare's (United) reduction of her Personal Care Assistant (PCA) hours from forty hours per week to twenty-five hours per week. United first informed the petitioner of the reduction on November 20, 2014. The petitioner filed a stage 1 appeal, which was denied on

November 26, 2014. Petitioner then filed a stage 2 appeal, which was denied on December 30, 2014. The matter was transmitted to the Office of Administrative Law (OAL) where it was filed as a contested case on December 15, 2014. The parties requested an adjournment of the initial hearing date of February 19, 2015, due to the petitioner's hospitalization and pneumonia. On April 2, 2015, a field hearing was conducted in Jersey City, New Jersey. At the close of testimony, the parties requested leave to file written closing summation. The record closed on May 18, 2015, after the receipt of written closing summation and replies.

FACTS

At the hearing, the respondent presented one witness, Ray Gridley. Mr. Gridley is a registered nurse who had been employed with United for approximately three years. In the course of his responsibilities, he had completed hundreds of assessments for members receiving long-term care in connection with requests for PCA's. Mr. Gridley was familiar with the fact that the assessment generally rated activities of daily living in order to assess areas where a recipient may need hands-on assistance of a PCA. Mr. Gridley was also aware that when he performed the assessments, he based his assessment on his observations of a patient, the patient's input, and the caregiver's input. In determining scoring, a nurse must make one selection per category and the categories are mutually exclusive. Mr. Gridley explained further that the assessment determined a raw score of the number of hours of PCA was needed by a recipient, up to a maximum of twenty-five hours. He testified that although the governing regulation allowed a maximum of forty hours, United's policy was that the Medical Director had the discretion of deciding whether any additional hours beyond the maximum potential of twenty-five hours was necessary, and a nurse performing the initial assessment could not approve more than twenty hours of PCA, without the Medical Director's approval. Mr. Ridley was not familiar with any specific criteria utilized by the Medical Director.

In connection with the instant case, Mr. Ridley had no knowledge of the petitioner's assessment, input, or observations. He was aware, based on review of

notes in the file, that her assessment score had totaled sixteen and that the Medical Director had increased her PCA hours to twenty-five hours per week.

The petitioner presented two witnesses at the hearing—Lisa Rozycki and the petitioner, C.S. Ms. Rozycki was admitted as an expert in the field of nursing. She is a registered nurse and has worked in the field for twenty-three years. She presently holds a position at the Carrier Clinic and as an Independent Consultant for Disability Rights New Jersey. In her former capacities, she has served as the Director of Nursing, Assistant Director of Nursing, Regional Quality Risk Specialist, and in Risk Management. She has supervised the daily care provided by nurses and has assessed over 900 patients per month for PCA hour qualification.

Ms. Rozycki testified that on March 21, 2015, she visited the petitioner's home to perform a two-hour assessment. She observed the petitioner during feeding, transfers, toiletry, shopping, laundry, and housekeeping. She also reviewed the petitioner's medications and spoke with the petitioner regarding her input on her diagnoses. Based on her observations, Ms. Rozycki saw that the petitioner could not walk without assistance nor transfer to her bed. She observed tremors and shaking in the petitioner who she observed needed constant assistance with ambulation and movement. During her observation, she also saw the personal assistant perform various tasks for the petitioner, including cooking meals, serving meals, dressing the petitioner, and assisting with incontinence. Ms. Rozycki saw that the petitioner has difficulty grooming and shopping and cannot do laundry or housekeeping. Ms. Rozycki was aware that the petitioner had rheumatoid arthritis and congestive heart failure and was aware of her list of medications.

The petitioner, C.S., testified on her own behalf. She is eighty-eight years old and lives in her home with her daughter. She first began to receive PCA care in February 2012 after suffering a stroke. She described that she cannot walk, cook, or clean and that the aid provides assistance in all of these areas. She cannot use her arms to lift due to her rotator cuff and has difficulty getting around the house unassisted. She has general weakness on the entire right side of her body since the

stroke. She has suffered multiple hospitalizations. Typically, she requires assistance with bathing and use of the tub so she can only shower several times a week and relies on a sponge bath the remaining days. She cannot prepare meals and requires assistance with meal preparation and eating. C.S. testified that she cannot get out of the house on her own or transfer on her own. She indicated that it typically takes her approximately ten minutes to transfer and she can only stand on her own for a few seconds. Her daughter works full time and arrives home after 4 p.m. and assists on the weekends.

LEGAL ANALYSIS

United Healthcare operates a managed health plan for Medicaid recipients in the State of New Jersey and therefore, maintains an obligation to provide medically necessary care. N.J.A.C. 10:49-5.1. Medically necessary care can entail provisions of personal care assistants to tend to the individual needs of recipients. N.J.A.C. 10:60-3.5(a)(1). These individual needs encompass activities of daily living and instrumental activities of daily living as well as physician prescribed personal care and other health services. N.J.A.C. 10:60-2.1(d). The amount of personal care services is determined during a face-to-face evaluation with the recipient using a standard PCA Assessment Form FD-410, capturing the recipient's supportive service/living environment needs, cognitive/mental status, ambulation/mobility, ability to transfer, ability to feed herself, ability to bathe herself, and ability to perform shopping and laundry tasks. N.J.A.C. 10:60-3.9.

The burden of proof in this matter falls on the respondent, acting as the provider of Medicaid services, because they sought to change the status quo by reducing the petitioner's PCA hours from the level she had maintained for more than two consecutive years. Based on the preponderance of the competent evidence, I **CONCLUDE** that the respondent failed to meet its burden to demonstrate that the reduction was warranted. The witness presented by the respondent did not have personal knowledge of the basis for the petitioner's specific scoring, but was generally familiar with how the scoring worked in other cases in which he was a reviewer.

However, he had not assessed the petitioner and was not personally familiar with her personal care needs. Neither could the witness provide critical testimony regarding the basis for use of the Medical Director's discretion in granting additional scoring points beyond the sixteen-hours assessed on the scoring card. Therefore, there was no evidence to evaluate why the respondent scored the petitioner at twenty-five hours versus forty hours.

Moreover, the petitioner was a compelling witness on her own behalf who provided sufficient credible evidence of her current needs, corroborated by her witness, Ms. Rozycki. The petitioner was a very competent and forthright witness who described a daily lifestyle in which she is nearly entirely dependent on others. Her limitations in standing, transferring, moving, meal preparation and household chores, coupled with her medications, diagnoses, stroke and hospitalizations—including one recently that delayed a hearing in this matter—provided compelling testimony that a reduction in her PCA hours was unwarranted. Absent any testimony by the respondent to demonstrate a remarkable increase in the petitioner's independence in the key areas of the assessment, any reduction was inappropriate. The respondent presented no witness that could dispute the petitioner's version of the facts and she presented a witness, with an expertise in nursing that corroborated based on her own lay observations, that the petitioner was truthful in testifying about her life activities.

Most importantly, the assessment model used by the respondent was fundamentally flawed in that it necessarily deflated and held down any recipient's ability to receive maximum scores. The primary assessment tool was capped at a score of 25, with the remaining scoring to be determined on the discretion of the Medical Director. However, no testimony was offered as to what the Medical Director's guidelines were or how intimately involved in the initial assessment the Medical Director became. In fact, the respondent's witness was clear that the involvement of the Medical Director to even exercise any discretion in this instance was discretionary. Fundamental fairness in the respondent's obligation to meet out the requirements for the Medicaid program demand that the respondent create a more equitable scoring

assessment that neither unfairly holds down, nor inflates a recipient's ability to fairly reflect the number of PCA hours required given their limitations in life activities.

ORDER

Accordingly, the reduction in the petitioner's PCA hours was unwarranted and is **REVERSED**. It is **ORDERED** that the petitioner's PCA hours be restored to the level of 40 hours per week immediately.

I hereby **FILE** my Initial Decision with the **DIRECTOR OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES** for consideration.

This recommended decision may be adopted, modified or rejected by the **DIRECTOR OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**, the designee of the Commissioner of the Department of Human Services, who by law is authorized to make a final decision in this matter. If the Director of the Division of Medical Assistance and Health Services does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within seven days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES, Mail Code #3, P.O. Box 712, Trenton, New Jersey 08625-0712**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

June 4, 2015
DATE

Tiffany M Williams
TIFFANY M. WILLIAMS, ALJ

Date Received at Agency:

Date Mailed to Parties:

/rr

LIST OF EXHIBITS

For Petitioner:

- P-1 Report of Lisa Rozycki
- P-2 Lisa Rozycki's C.V., resume

For Respondent:

- R-2 PCA assessment tool
- R-3 Case coordinator's notes
- R-5 Utilization management committee's evaluation/summary

LIST OF WITNESSES

For Petitioner:

Lisa Rozycki
C.S.

For Respondent:

Ray Gridley, R.N.