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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1006-21

M.E.,

Petitioner-Appellant,

v.

HORIZON NJ HEALTH and DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES,

Respondents-Respondents.

Argued March 13, 2023 – Decided March 27, 2023

Before Judges Haas and Fisher.

On appeal from the New Jersey Department of Human Services, Division of Medical Assistance and Health Services.

Kristine Marietti Byrnes argued the cause for appellant (Legal Services of New Jersey, attorneys; Kristine Marietti Byrnes and Maura Sanders, on the briefs).

Stephen Slocum, Deputy Attorney General, argued the cause for respondent Division of Medical Assistance and Health Services (Matthew J. Platkin, Attorney

General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Stephen Slocum, on the brief).

PER CURIAM

M.E. is a 43-year-old woman who became profoundly disabled following a catastrophic viral illness in February 2005. A dispute arose between M.E. and her health care provider – Horizon NJ Health – about the amount of personal care assistant (PCA) hours she medically required; M.E. believed seventy hours were necessary while Horizon made an assessment in June 2017 that only forty hours were necessary. The record was developed during an evidentiary hearing, with an administrative law judge finding, in her August 25, 2021 decision, that sixty-five hours of PCA time was medically necessary; the director of the Division of Medical Assistance & Health Services (DMAHS), however, concluded that the scope of M.E.'s administrative appeal permitted only a determination about Horizon's June 2017 assessment and, in that regard, the director ruled that Horizon's assessment was sound.

We conclude that the director's determination was unreasonable in limiting the scope of the final agency decision, and we remand for the DMAHS's determination about the number of PCA hours that were medically necessary up to and including the date the ALJ hearing ended.

I

In 2005, M.E. contracted Guillain-Barre, which led to a stroke, congestive heart failure, neuropathy, asthma, total paralysis, loss of vision in her left eye, and loss of speech. Following rehabilitation, M.E. remained a paraplegic; she regained the use of her upper body and the ability to speak. She thereafter had a PCA and an aide, through Global Options, which also provided a commode, a wheelchair, a bed, and fifty-hours of service a week. She still suffers from congestive heart failure, neuropathy, irritable bowel syndrome, obesity, muscle spasms in her legs, syncope, stroke, asthma, arthritis, lymphedema, hyperthyroidism, swelling of lymph nodes, diabetes, acute respiratory distress syndrome, bilateral paraplegia, hypertension, anemia, and Guillain-Barre, a life-long condition. Because of her paraplegia, M.E. required assistance to move her legs; this has worsened over time due to the development of lipedema. Going to and using the bathroom became difficult, causing urinary tract infections. The record created before the ALJ revealed that M.E.'s father, who is now seventy years old, provided the majority of her care because the hours authorized by Horizon's assessments were insufficient to complete the necessary tasks that M.E. requires.

The record developed before the ALJ revealed that Horizon performs annual assessments about the amount of PCA hours medically necessary.[1] Horizon has never authorized more than forty hours per week. Horizon provided the testimony of a registered nurse who explained that "there's a list of different questions that we ask the member[,] and each question is judged accordingly and at the end of the [a]ssessment [t]ool, a number is configured and that's what we submit back." The nurse testified that, in reaching her June 1, 2017 assessment, she never observed M.E. completing the necessary tasks, but based on the answers to her questions, she found M.E. did not have extenuating circumstances "to go above [forty] hours per week for PCA"; M.E. "was scored the maximum permitted."

In 2017, M.E. appealed Horizon's June 2017 assessment "because hours had dropped from the [fifty] hours to [forty] hours" following her hospital

[1] DMAHS, under New Jersey's Medicaid program, N.J.S.A. 30:4D-7, authorizes PCA services that are "medically necessary," which is defined as those services that are "consistent with the diagnosis of the condition and appropriate to the specific medical needs of the enrollee and not solely for the convenience of the enrollee or provider of service and in accordance with standards of good medical practice and generally recognized by the medical scientific community as effective." N.J.A.C. 10:74-1.4. PCA services require prior authorization and assessment by a registered nurse, who must conduct face-to-face evaluations and complete the PCA nursing assessment tool. PCA services provide a maximum of forty hours per week, but additional hours are approved "on a case-by-case basis, based on exceptional circumstances." N.J.A.C. 10:60-3.8(g).

discharge. Her doctor requested that she "get more hours." M.E. requested seventy hours of PCA services weekly but her request was rejected. She was notified of her appeal rights in August 2017.

II

M.E. appealed to the Department of Banking and Insurance, which referred the matter to the DMAHS. This matter was then sent to the Office of Administrative Law, which designated an ALJ to conduct a hearing. M.E. found it necessary to seek numerous adjournments throughout 2018, 2019, and 2020, due to her medical condition or counsel's unavailability. Finally, starting in January 2021, a two-day hearing was conducted virtually; the hearing was completed toward the end of March 2021. In the interim, Horizon conducted three additional annual reassessments, each time finding only forty hours of PCA services were medically necessary.

On August 25, 2021, the ALJ rendered her initial decision, in which she assessed the credibility of witness, the particulars of the testimony, and the June 2017 assessment as well as the three annual assessments that followed. The ALJ concluded that M.E. required sixty-five hours per week of PCA care as a matter of medical necessity.

Horizon filed exceptions. On October 19, 2021, the DMAHS issued its final agency decision, concluding that the only thing the ALJ should have considered was the June 2017 PCA assessment. That is, the director's decision stated that while M.E.'s and witness's "testimony may be credible with regard to her current need, it does not address the [2017] assessment currently before the court," and, in that regard, "the relevant evidence . . . supports Horizon's June 2017 assessment." The director also mandated that Horizon render a new assessment about what is medically "necessary [for M.E.'s] particular needs."

III

M.E. appeals the DMAHS's final agency decision, arguing:

> I. IN DISREGARDING RELEVANT LAW AND THE EXTENSIVE TESTIMONY AND FINDINGS OF THE [ALJ], THE MEDICAID AGENCY'S DECISION IS A CLASSIC EXAMPLE OF ARBITRARY AND CAPRICIOUS ACTION.
>
> II. THE FINAL AGENCY DECISION DEPRIVES PETITIONER OF HER DUE PROCESS AND FUNDAMENTAL FAIRNESS RIGHTS.

Considering the particular circumstances, and the fact that the ALJ heard evidence and made findings about the amount of PCA hours that were medically necessary up until the record closed, we conclude that the director's decision to turn back the clock and take a narrow view of the matter – by limiting the scope

of the decision to what was medically necessary up until June 2017 – is arbitrary, capricious and unreasonable.

IV

We conclude that the DMAHS's limited view of the matter before it was arbitrary, capricious and unreasonable for two essential reasons.

First, although the director's view of the matter's scope was certainly consistent with its scope when M.E. commenced her administrative appeal in 2017, it suffers from a rigidity that untethers the decision to what the evolving circumstances required. Not to be lost is the fact that the matter concerns M.E.'s day-to-day existence and well-being. There is no dispute that M.E. is a severely disabled individual who requires a significant amount of care and assistance to just perform physical requirements and needs that most of us take for granted. It is that very circumstance that prevented the conducting of an evidentiary hearing until early 2021. In deciding to examine the ALJ's decision only insofar as it shed light on the 2017 assessment, the director has not explained how M.E. may now go about seeking review of the annual assessments that were made from the time she appealed until the ALJ's August 2021 decision. Is there a path to considering those assessments? If so, are the parties to be put to the burden of producing the same evidence and testimony the ALJ has already heard? Or,

has M.E.'s right to seek an appeal of the assessments made during the appeal's pendency been forfeited? The final agency decision – by creating procedural difficulties that lack a clear path of resolution and by delaying a resolution of the dispute about her present needs – in the final analysis is unreasonable. See Texter v. Dep't of Hum. Servs., 88 N.J. 376, 385 (1982) (recognizing that administrative agencies necessarily "possess the ability to be flexible and responsive to changing conditions"); Heir v. Degnan, 82 N.J. 109, 121 (1980).

Second, the limitation imposed by the director provides no benefit for either party and disserves the speed and efficiency the public has a right to expect in administrative proceedings. See In re Application for Medicinal Marijuana Alternative Treatment Ctr. for Pangaea Health & Wellness, LLC, 465 N.J. Super. 343, 364 (App. Div. 2020). While leaving M.E. with an uncertain and unchartered path for seeking relief from the annual assessments rendered during the pendency of these proceedings, the final agency decision relegates Horizon to a similar uncertainty and continued litigation over things already fairly litigated; added to this is further delay in resolving M.E.'s present needs. Horizon would have suffered no harm or prejudice if the final agency decision adopted a broader view of M.E.'s administrative appeal. Horizon was given every opportunity, and took every opportunity, to respond to the evidence

presented without ever arguing that M.E. was exceeding the proper contours of the appeal. In short, there was no sound or rationale reason, and no prejudice to Horizon to be avoided, through the director's crabbed understanding of the appeal's scope. The only prejudice that might come out of all this would be that which would befall the parties and the efficient disposition of the parties' disputes, if we were to allow the final agency decision to stand and leave it to the parties to relitigate what they've already fully and fairly litigated.

V

For these reasons, we conclude that the final agency decision, insofar as it confined itself to the propriety of Horizon's June 2017 assessment, must be reversed. We remand the matter to the DMAHS to consider, based on the record created by the ALJ, the proper amount of medically-necessary PCA services to which M.E. is entitled as of the date the ALJ closed the record in this matter.

Reversed and remanded to the DMAHS. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

CLERK OF THE APPELLATE DIVISION