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DEPARTMENT OF HUMAN SERVICES
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STEPHEN CHA, MD, MHSR
Acting Commissioner

GREGORY WOODS
Assistant Commissioner

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

B.T.,		
PETITIONER,	:	**ADMINISTRATIVE ACTION**
v.	:	**FINAL AGENCY DECISION**
HORIZON,	:	**OAL DKT. No. HMA 11250-25**
RESPONDENT.	:	

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. Procedurally, the time period for the Agency Head to render a Final Agency Decision is June 4, 2026, in accordance with an Order of Extension.

This matter concerns the reduction of Petitioner's Private Duty Nursing (PDN) services by Horizon from sixteen hours per day to twelve hours per day, seven days a week. Petitioner is eighteen years old and diagnosed with congenital malformation of skull and face bones and suffers from global developmental delays, premenstrual dysphoria, congenital anomaly of tongue, hyperactive disorder, bilateral cleft lip,

esophageal reflux, dysphagia, micrognathia, facial dysmorphism, tracheal stenosis post tracheostomy, aggression, microcephalus, unspecified congenial anomaly of face and neck, asthma, CLO, mild scoliosis, profound bilateral hearing loss, chronic tracheobronchitis, speech and language disorder, eosinophilic, esophagitis, sialorrhea, continence without sensory awareness, refraction error, constipation, vitamin D deficiency, GT place, trach status, and self-injurious behavior. ID at 2.

The regulations state that the purpose of PDN services is to provide "individual and continuous nursing care, as different from part-time intermittent care, to beneficiaries who exhibit a severity of illnesses that require complex skilled nursing interventions on a continuous ongoing basis." N.J.A.C. 10:60-5.1(b). To be considered in need of EPSDT/PDN services, "an individual must exhibit a severity of illness that requires complex intervention by licensed nursing personnel." N.J.A.C. 10:60-5.3(b). "Complex means the degree of difficulty and/or intensity of treatment/procedures." N.J.A.C. 10:60-5.3(b)(2). The regulations define "skilled nursing interventions" as "procedures that require the knowledge and experience of licensed nursing personnel, or a trained primary caregiver." N.J.A.C. 10:60-5.3(b)(3). Further, N.J.A.C. 10:60-5.4(b) sets forth the criteria to be met in order to receive PDN services:

> **(b)** Medical necessity for EPSDT/PDN services shall be based upon, but may not be limited to, the following criteria in (b)1 or 2 below:
>
> **1.** A requirement for all of the following medical interventions:
>
> **i.** Dependence on mechanical ventilation;
>
> **ii.** The presence of an active tracheostomy; and
>
> **iii.** The need for deep suctioning; or
>
> **2.** A requirement for any of the following medical interventions:
>
> **i.** The need for around-the-clock nebulizer treatments, with chest physiotherapy;
>
> **ii.** Gastrostomy feeding when complicated by frequent regurgitation and/or aspiration; or

iii. A seizure disorder manifested by frequent prolonged seizures, requiring emergency administration of anti-convulsants.

Additionally, the regulation goes on to exclude certain criteria that do not rise to the level of PDN services unless the criteria above is met:

> (d) Services that shall not, in and of themselves, constitute a need for PDN services, in the absence of the skilled nursing interventions listed in (b) above, shall include, but shall not be limited to:
>
> 1. Patient observation, monitoring, recording or assessment;
> 2. Occasional suctioning;
> 3. Gastrostomy feedings, unless complicated as described in (b)1 above; and
> 4. Seizure disorders controlled with medication and/or seizure disorders manifested by frequent minor seizures not occurring in clusters or associated with status epilepticus.
>
> N.J.A.C. 10:60-5.4(d).

Once medical necessity is established, the following criteria impact the extent of authorized PDN hours:

> 1. Available primary care provider support;
>   i. Determining the level of support should take into account any additional work related or sibling care responsibilities, as well as increased physical or mental demands related to the care of the beneficiary;
> 2. Additional adult care support within the household; and
> 3. Alternative sources of nursing care.
>
> N.J.A.C. 10:60-5.4(c).

Registered nurse Jacqueline Fenton (Nurse Fenton) did an assessment using the Acuity Tool on April 30, 2025. ID at 2. During the hearing, Nurse Fenton testified that based on her assessment, the Petitioner was only qualified for twelve hours of PDN services a day. Ibid. As part of her assessment, Nurse Fenton completed the acuity tool and considered nursing notes, treatment plans, and letters of medical necessity from treating physicians. Ibid. Nurse Fenton justified the Petitioner's reduction in PDN hours

by explaining that needs change as individuals get older, and that many activities that the Petitioner needs help with do not require a private duty nurse and can be completed by a caregiver. Id. at 3. She testified that the Petitioner is now able to use the bathroom on their own, and although they have breathing problems, the Petitioner breathes through a tracheostomy, not a breathing machine. Ibid. Furthermore, the Petitioner does not suffer from seizures and receives all her food and medicine through a stomach tube. Ibid.

During the fair hearing, the Petitioner's mother, D.D., also testified. D.D. argued that the Petitioner needs sixteen hours of PDN services due to her fragile condition, and that a private duty nurse is needed for all her care due to the Petitioner's fragile state, and that neither her nor a trained care provider can provide all the care she needs. Ibid. She noted that the Petitioner needs to have her tracheostomy suctioned to prevent aspiration and has behavior issues. Id. At 4.

In the Initial Decision, the Administrative Law Judge (ALJ) noted that D.D. did not break down the hours, nor did she provide a basis to dispute Horizon's assessment or even dispute the fact that a trained caregiver could provide assistance with many tasks. Ibid. However, in this situation, it is not the Petitioner's burden to prove why the reduction is inappropriate. Rather, the MCO must demonstrate how the member's condition or situation has changed, such that they no longer qualify for the number of PDN hours previously approved. This must be justified in reference to the underlying medical necessity standard, as articulated in state regulations. See Atkinson v. Parsekian, 37 N.J. 143, 149 (1962); and Cosme v. Figueroa, 258 N.J. Super. 333, 338 (Ch. Div. 1992). See also Y.F. v. Wellpoint. HMA 17449-2025 (Final Agency Decision; February 4, 2026) where DMAHS agreed with an Initial Decision finding that the burden of proof was on the Respondent to show how a petitioner's clinical condition has changed since the previous assessment to justify a different outcome.

The ALJ noted that Nurse Fenton's testimony was consistent with Horizon's policy and the Acuity tool. ID at 3. However, it is important to note that the PDN Acuity Tool used by Horizon appears nowhere in state regulations and is neither mandated nor endorsed by DMAHS. While Horizon is permitted to use such a tool to assist with their assessment of a member's need for services, the fact that a member's score on such a tool is below a given threshold does not in itself demonstrate that the member does not qualify for any specific amount of PDN services.

The ALJ also found that Nurse Fenton's testimony was supported by the nursing notes, doctor's notes, and her own notes from the assessment. Ibid. Moreover, the ALJ found that during her testimony, Nurse Fenton went through each category of the Acuity tool, and she explained that while the Petitioner needs assistance with many daily tasks, these tasks can be provided by a caregiver and do not require PDN hours. Ibid. The ALJ concluded that Horizon demonstrated that only twelve hours of PDN services a day were medically appropriate, and that Horizon properly considered primary care provider support in coming to this decision. Ibid. at 7. However, the Initial Decision does not contain any actual summary or discussion of what exactly Nurse Fenton testified about each category and what conclusions stem from that testimony. This omission is important. Since Horizon has reduced the Petitioner's approved services from sixteen hours to twelve hours, the burden is on Horizon to show how Petitioner's clinical condition changed since the previous assessment to justify a different outcome. On that point, based on the summaries in the Initial Decision, it appears that none of the witnesses who testified for Horizon addressed how Petitioner's clinical condition changed since the previous assessment to justify a reduction of PDN hours.

A further review of Horizon's denial letter dated May 1, 2025 shows that the only mention of any change in Petitioner's clinical condition is, "Your child is now able to use

the bathroom on her own without help." (R-11). This single sentence is not sufficient for Horizon to meet their burden to show how Petitioner's clinical condition had changed to justify a reduction of PDN services.

Thus, based on the record before me and for the reasons set forth herein, I hereby REVERSE the Initial Decision in this matter and find that the reduction in Petitioner's PDN hours was unwarranted. It has been approximately thirteen months since Petitioner's last assessment. Therefore, Petitioner's current status must be reassessed, keeping in mind that with the reduction or termination of PDN hours, there must be evidence and/or testimony specifically addressing the change in Petitioner's condition that warranted the change. Note that, per the July 2025 contract between DMAHS and Managed Care Organizations, when a reduction in services has been overturned on appeal, and a subsequent reassessment results in an adverse determination within five years of the previous reduction being overturned, the new adverse determination must refer to the outcome of the preceding overturn, and clearly describe the change in the member's condition or living arrangements since the overturn that would justify the reduction or termination of PDN hours. State & MCO Contract, Section 4.6.4D(2), at Pg 118. Because the May 1, 2025 reduction has, through this Final Agency Decision, now been overturned on appeal, this contract provision will be in effect with respect to any future reductions or denials of PDN hours for Petitioner.

THEREFORE, it is on this 2nd day of JUNE, 2026,

ORDERED:

That the Initial Decision is hereby REVERSED and that Petitioner's PDN hours be restored to the level of sixteen hours per day, seven days per week. Horizon shall

reassess Petitioner's current medical condition to determine Petitioners present medical necessity for PDN services, within four weeks of the date of this decision.

Gregory Woods

Gregory Woods, Assistant Commissioner
Division of Medical Assistance and Health Services