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

J.S.,	:	
PETITIONER,	:	**ADMINISTRATIVE ACTION**
v.	:	**FINAL AGENCY DECISION**
HORIZON NJ HEALTH,	:	**OAL DKT. No. HMA 06537-25**
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. Exceptions were timely filed by the Petitioner. Procedurally, the time period for the Agency Head to render a Final Agency Decision is June 25, 2026, in accordance with an Order of Extension.

This matter concerns the termination of Petitioner's Private Duty Nursing (PDN) services by Horizon. The Petitioner is twenty-one years old and suffers from atrial septal defect (ASD), flat foot, dermatophytosis, asthma, congenital malformation of larynx and immunodeficiency. ID at 11. On or about September 20, 2023, Horizon notified Petitioner that they were terminating his PDN hours. R-1. On or about October 7, 2023, Horizon

submitted the matter for peer review by MES Peer Review Services (MES). MES review concluded that the medical records did not meet the criteria for continuation of PDN services. (R-2). Since approximately 2019, Petitioner has been receiving PDN services of twelve hours per day, seven days per week. ID at 4.

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 Kimberly Schmidt (Nurse Schmidt) did a reassessment of the Petitioner's PDN services using the Acuity Tool on September 20, 2023, a completed form by Bayada requesting to continue PDN services, a letter of medical necessity by Dr. Patel dated September 8, 2023, a Home Health Certification and Plan of Care by Dr. Patel covering the period for August 21, 2023 to October 19, 2023, an on-site assessment of Petitioner performed by Michele Mauleon, BSN, RN, CM II, from Bayada on August 18, 2023, and Bayada's nursing shift notes from August 28, 2023 through September 7, 2023. (R-7, R-8, R-9). Based on this information, she completed the PDN Acuity Tool on

September 20, 2023, which resulted in a score below the minimum threshold required to authorize PDN services. (R-4). Nurse Schmidt summarized her findings in an authorization case summary report reviewed by a medical director. (R-3). She found that the Petitioner was oriented and verbal. ID at 3. She found that the Petitioner needed periodic checks of his cardiac needs and reported occasional epigastric pain of which required no new interventions. Ibid. In regard to the Petitioner's respiratory needs, she found that the Petitioner reported occasional epigastric pain of which required no new interventions. Ibid. She also found that Petitioner ate a regular diet by mouth and was continent. Ibid. In regard to his musculoskeletal needs, Nurse Schmidt found that Petitioner could walk up to 30 minutes a day and had full range of motion. The nursing notes also indicated that the Petitioner took a 1.6 mile walk by himself. Ibid. The Petitioner was also attending school where he received physical therapy, occupational therapy, and speech therapy. Ibid.

Nurse Schmidt identified that Petitioner demonstrated a significant clinical improvement since he was last approved for PDN in 2019. Id. at 4. Since 2019, Petitioner no longer required intensive respiratory interventions, such as regular nebulizer treatments, oxygen therapy, nasal/oral suctioning, or more frequent chest physiotherapy. Ibid. The Petitioner also no longer required injectable medication management or skin treatments every four hours or more often, communication deficit management, cast or brace management, or rehabilitation therapy by the nurse for 3 hours or more per day. Ibid. The Petitioner demonstrated stable respiratory and cardiovascular status as reflected in the nursing notes. (R-9) Schmidt testified that the nursing notes showed they performed chest physiotherapy, provided medication, placed immobilizers on his ankle/foot, monitored for aspirations, and took vital signs. Ibid. Nurse Schmidt performed another review in May 2025 and found that the Petitioner's needs had not changed since

2023, other than Wegovy injections for weight loss. Ibid.

David Sorrentino, M.D., (Dr. Sorrentino) also testified at the Fair Hearing. Dr. Sorrentino reviewed Petitioner's medical history and the clinical documentation submitted to Horizon in support of the PDN request including the plan of care, nursing notes, in-person assessment by Bayada, as well as the PDN Acuity Tool completed by Nurse Schmidt. ID at 5. Dr. Sorrentino found that the records reflected clinical stability and improvement since the prior PDN approval in 2019. Ibid. The records showed that the Petitioner was stable on room air, tolerated oral intake, received medications by mouth, and demonstrated no ongoing need for frequent skilled respiratory interventions such as deep suctioning, ventilator support, or around-the-clock nebulizer treatments. Ibid. He agreed that PDN services were no longer medically necessary and termination was clinically appropriate. Ibid.

Registered Nurse Christine Benko, RN, testified on behalf of the Petitioner at the Fair Hearing. She stated that it is medically necessary for the Petitioner to not be left alone for even short periods of time due to the danger that he might experience an unobserved respiratory emergency. Ibid. She also testified that the Petitioner requires daily nursing interventions including twice daily physiotherapy treatments with a smart vest, occasional oral or nasal suctioning when sick, taking vital signs, taking appropriate action if signs of respiratory distress appear, administering an injectable medication Zepound, once per week as well as administering daily medications at least twice per day. Ibid. She did not identify documentation demonstrating that the Petitioner experiences frequent respiratory distress, requires continuous skilled interventions, or meets the regulatory criteria for PDN services. Ibid.

During the fair hearing, Petitioner's mother S.S. testified and claimed that there

had been no noticeable improvement in the Petitioner's medical condition since the assessment in 2019. Id. at 6. She testified that the Petitioner requires supervision but also admitted that the Petitioner is currently not experiencing respiratory issues and that they only occur during periods of acute illness. Ibid. She did not dispute that there were zero nebulizer treatments administered between August 28, 2023, to September 7, 2023. Ibid. She also did not dispute that on August 18, 2023, according to the in-person assessment by Bayada, there was no recent use of the rescue bronchodilators which were prescribed as needed. Ibid. She also admitted that Petitioner does not require daily nebulizer treatment or oxygen and only requires it when sick, such as the time he had the flu. Ibid. S.S. also testified that Petitioner had a tracheostomy for ten years, which was removed around 2017 or 2018, and then had a stoma for approximately three years, which required surgical intervention to close, in 2020. Ibid.

In the Initial Decision, the ALJ found that the Petitioner no longer requires intensive respiratory interventions, such as regular nebulizer treatments, oxygen therapy, nasal/oral suctioning, or more frequent chest physiotherapy. Id. at 12. The ALJ further found that the Petitioner is not dependent on a mechanical ventilator, does not have an active tracheotomy, and does not require deep suctioning, and concluded that the Petitioner does not qualify for PDN services. I agree.

It is Horizon's burden to 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.

Medical necessity for EPSDT/PDN services shall be based upon, but may not be limited to, the following criteria in (b) or (b)(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 an anti-convulsant.
>
> N.J.A.C 10:60-5.4(b).

In addition, the regulation goes on to exclude certain criteria that do not rise to the level of PDN services unless the criteria below 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).

PDN services may not be authorized based on caregiver strain or household circumstances alone, absent the medical criteria required by regulation. PDN services

are not meant for observation or monitoring, or occasional suctioning as explicitly stated in N.J.A.C. 10:60-5.4(d).

Since 2019, the petitioner no longer requires intensive respiratory interventions, such as regular nebulizer treatments, oxygen therapy, nasal/oral suctioning, or more frequent chest physiotherapy. Furthermore, the petitioner is not dependent on a mechanical ventilator, does not have an active tracheotomy, and does not require deep suctioning. The documentation and testimony presented at the Fair Hearing reflects clinical stability, improvement since the prior PDN approval in 2019, and care needs that may be safely met by a trained caregiver. The records showed that Petitioner was stable on room air, tolerated oral intake, received medications by mouth, and demonstrated no ongoing need for frequent skilled respiratory interventions such as seep suctioning, ventilator support, or around-the-clock nebulizer treatments. PDN services are not meant for observation or monitoring, or occasional suctioning as explicitly stated in N.J.A.C. 10:60-5.4(d). The petitioners' medical condition has shown steady improvement, his tracheotomy has been removed, and he only needs assistance for monitoring, mobility and medication. Horizon has met their burden to demonstrate a change in the Petitioner's clinical condition that shows PDN services are not a medical necessity for the Petitioner anymore.

In their Exceptions, the Petitioner argues that the ALJ relied solely on the PDN Acuity Tool score. However, the ALJ referenced the plan of care, nursing notes, and the in-person assessment by Bayada many times throughout the Initial Decision. The Petitioner also claims that the ALJ mistakenly believes that the Petitioner would require skilled nursing interventions in order to qualify for PDN services. However, in the Initial Decision the ALJ concludes that the Petitioner does not qualify for PDN services because they do not meet the medical necessity standard as he is not dependent on a mechanical

ventilator, does not have an active tracheotomy, and does not require deep suctioning. The Petitioner also argues that Horizon's failure to present testimony of the person who made the decision to terminate PDN services amounts to a violation of due process. In Goldberg v. Kelly 397 U.S. 254 (1970), a case involving financial aid under a federally assisted program, the United States Supreme Court held "[t]he fundamental requisite of due process of law is the opportunity to be heard." at 267. The Court explained "these principles require that a [federally assisted program] recipient have timely and adequate notice detailing the reasons for a proposed termination [of assistance], and an effective opportunity to defend by confronting any adverse witness and by presenting his [or her] own arguments and evidence orally." Id. at 267-68. The Third Circuit Court of Appeals has noted in a-like vein that "([s]uch notice is necessary to protect claimants against proposed action 'resting on incorrect or misleading factual premises or on misapplication of rules to policies of the facts of particular cases." Ortiz v. Eichler, 794 F.2d 889, 893 (3d Cir. 1986) quoting Goldberg), 397 U.S. at 268). In this matter, the Petitioner is protected against an action "resting on incorrect or misleading factual premises or on misapplication of rules to policies of the facts of particular cases," because they were provided with advance notice of the termination along with the reasons why the termination was happening. (R-1). Moreover, the Petitioner was provided with clinical records, assessment tools, and policy criteria relied upon by Horizon in making its determination. Finally, the petitioner was afforded a full opportunity to challenge those materials and Horizon's medical-necessity rationale through cross-examination of Horizons' witnesses. The Petitioner also claims that the ALJ did not consider the Petitioner's situational factors. However, situation criteria are only considered after medical necessity has been established. N.J.A.C. 10:60-5.4(c).

The Petitioner also argues that Nurse Schmidt failed to check off sleep

disturbance, injectable medication management, nebulizer management, nasal/oral suctioning on the Acuity Tool. However, these are not items that would support the need for skilled nursing services. The petitioner is not monitored for sleep disturbance since nursing services are only provided during the day and there was no medical or other documentation to support the conclusion that the petitioner in fact suffers from a sleep disorder. ID at 16. Furthermore, the only injectable medication received by the petitioner is for weight management that is taken once a week. Ibid. The Petitioner generally uses a nebulizer once daily and the credible evidence does not support that skilled nursing is required for this treatment. Ibid. Finally, there was no indication from the testimony provided that the Petitioner receives regular nasal suctioning or that this was a treatment that requires skilled nursing services. Ibid.

Thus, based on the record before me and for the reasons set forth herein, I hereby ADOPT the Initial Decision in this matter and find that the termination of Petitioner's PDN hours was unwarranted.

THEREFORE, it is on this 23rd day of JUNE, 2026,

ORDERED:

That the Initial Decision is hereby ADOPTED.

Gregory Woods

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