

This matter concerns the reduction of Petitioner's private duty nursing (PDN) hours by Horizon. Petitioner was receiving twenty-four hours of PDN services per day. ID at 4. On July 11, 2024, Horizon sent Petitioner a notice reducing the PDN services to sixteen hours per day. Ibid. Horizon's decision to reduce the number of PDN services that Petitioner was receiving was not based on the Petitioner's medical necessity, but a maximum benefit received. Ibid. N.J.A.C. 10:60-5.9 does not allow individuals over twenty-one years old to receive more than sixteen hours per day of PDN services. Petitioner appealed this reduction of PDN hours. ID at 2.

Private duty nursing services are defined as "individual and continuous nursing care, as different from part-time or intermittent care, provided by licensed nurses in the home. . . ." N.J.A.C. 10:60-1.2. Licensed nurses, employed by a licensed agency or healthcare services firm approved by DMAHS, may provide PDN services in the home to beneficiaries receiving managed long-term support services (MLTSS). N.J.A.C. 10:60-1.2, N.J.A.C. 10:60-5.1 (a),(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). PDN services shall be limited to a maximum of sixteen hours, including services provided or paid for by other sources, in a twenty-four-hour period per person in MLTSS. There shall be a live-in primary adult caregiver who accepts twenty four-hour per day responsibility for the health and welfare of the beneficiary unless the sole purpose of the private duty nursing is the administration of IV therapy. N.J.A.C. 10:60-5.9(c).

In emergency circumstances, for example, when the sole caregiver has been hospitalized or for brief post-hospital periods while the caregiver adjusts to the new responsibilities of caring for the discharged beneficiary, the MCO or DMAHS may

authorize, for a limited time, additional hours beyond the sixteen-hour limit. N.J.A.C. 10:60-5.9(c)(3).

In this case, Petitioner turned twenty-one years old on July 6, 2021. ID at 4. On July 11, 2024, via letter, Horizon notified the Petitioner that it was reducing their PDN hours from twenty-four to sixteen hours daily. Ibid. Horizon's letter explained the basis for the reduction but acknowledged a continuing need for PDN services:

The request for 24 hours per day, 7 days per week of Private duty nursing (PDN) services is denied. We understand that you have complex medical problems. You have breathing problems and breathe through a hole in your neck (tracheostomy). You are on a breathing machine and receive breathing treatments. You have daily seizures. You get all of your medications and feeds through a stomach tube. You need full hands-on help with all daily tasks. You also need suctioning, seizure and aspiration (breathing in food or drink) precautions. Custodial care and health maintenance can be provided by a trained caregiver. Based on this information you will receive 24 hours per day, 7 days per week for 2 weeks for (sic) to assist with training and the transition of care. Skilled nursing care will then be provided for 16 hours per day, 7 days per week ongoing. This [is] the most hours allowed by your insurance. This decision is based on Horizon NJ Health Policy 31C.089.02 Private Duty Nursing.

Exhibit R-1

The Parties agreed that the material facts were not in dispute as to this PDN decision. ID at 3. Horizon and Petitioner presented a joint stipulation of facts and exhibits, which addressed the facts leading to the reduction in PDN services. Ibid. Both parties filed motions for summary decision and the record closed on March 17, 2026. Ibid.

Petitioner lives with her mother and has diagnoses of Rett Syndrome and Mitochondrial Metabolism Disorder. ID at 4. Petitioner is dependent on a ventilator and requires regular suctioning and nebulizer treatments, relies on a g-tube for all her medication and nutritional needs, has daily seizures, and needs full hands-on help with

all daily tasks. ID 3-4. There is no mention of any emergency or recent hospitalization of Petitioner or her guardian.

The parties stipulated that the decision to reduce the PDN hours to sixteen per day was not based on medical necessity, but on the regulatory PDN hour limitation. Exhibit C-1. In the Initial Decision, the Administrative Law Judge (ALJ) found that no genuine issue exists as to the material facts, and the only questions presented are whether Horizon's notice was deficient and whether the reduction, as per Horizon's PDN policy and the regulation, violates federal protections that are properly before the OAL. ID 6-7. No genuine dispute of fact exists that the Petitioner is a Medicaid recipient under the MLTSS program who turned twenty-one years old on July 6, 2021, who presents with complex medical problems requiring skilled nursing care. Exhibit C-1. Furthermore, it is undisputed that MLTSS/PDN regulations and Horizon's PDN policy limit the number of PDN hours for adult individuals under the MLTSS program to sixteen hours a day and require a primary adult caregiver to meet the individual's skilled needs for a minimum of eight hours a day. Ibid. It is also undisputed that Horizon provided a letter to the Petitioner regarding its decision, the basis for that decision, the supporting regulation and policy, how to appeal the determination, and how to file a fair hearing request. Ibid. No dispute exists that Horizon did not supply a copy of the PDN acuity tool with its notification. Ibid. The ALJ found that Horizon's decision to reduce the Petitioner's PDN services from twenty-four hours per day to sixteen hours per day has its basis solely in Horizon NJ Health Policy 31C.089.02 and N.J.A.C. 10:60-5.9(c). I agree.

At the Fair Hearing, the Petitioner argued that Horizon violated the Americans with Disabilities Act. 42 U.S.C. §12131, et seq. (ADA) and the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Rehabilitation Act) when it reduced the number of PDN services from twenty-four hours to sixteen hours within a twenty-four-hour period. ID at 8. Petitioner

also raised this argument in their filed Exceptions that Horizon's reduction of the Petitioner's PDN hours violates Federal law. Petitioner's Exceptions 1-7. In the Initial Decision the ALJ determined that the OAL does not have jurisdiction to address ADA or Rehabilitation Act claims. ID at 8-9. I agree. Both the ADA and the Rehabilitation Act are federal law, and it has previously been found that State agencies and the OAL do not have jurisdiction to rule on federal-law claims. Hruszko v. New Jersey Dep't. of Labor and Workforce Dev., CRT 10136-15, initial decision (Feb. 28, 2017), remanded, Dir. (July 17, 2017) (stating that "neither [the State agency] nor the OAL has jurisdiction to issue any ruling on the federal law claims" when the amended complaint contained ADA and Age Discrimination in Employment Act claims), <https://njlaw.rutgers.edu/collections/oal/>; D.H. ex rel. minor child. J.R.H. v. Board of Educ. of Montclair, EDU 09956-00, initial decision (March 14, 2002), affd., Comm'r (May 3, 2002), <https://njlaw.rutgers.edu/collections/oal/>.

Furthermore, In N.S., NS., and L.S., v. Americhoice of New Jersey, Inc., (July 26, 2005) OAL Docket No.: HMA 6759-4, 2005 N.J. AGEN LEXIS 496*, the presiding ALJ concluded that the OAL lacked jurisdiction to address ADA claims. Id. at 29. Rather, ADA cases are federal cases, citing Jones v. Illinois Cent. R.R., 859 F. Supp. 1144 (N.D. Ill. 1994). Under the ADA, public agencies are required to adopt procedures to handle ADA claims. 28 C.F.R. § 35.107. Furthermore, the New Jersey Supreme Court has stated that the filing of a complaint with the appropriate federal agency is probably required before a New Jersey "court" may hear a case that raises ADA claims. Hirsch v. State Bd. of Med. Exam'rs, 128 N.J. 160 (1992) see also I/M/O Oleksza, 95 N.J.A.R.2d (MVH) 5 N.J.A.C. 10:4.1 (stating "a grievance alleging that the agency has failed to comply with the ADA or has acted in a way that is prohibited by the ADA shall be submitted either in writing or orally to the designated ADA coordinator identified in N.J.A.C. 10:4-3.1").

Therefore, N.S. held that:

The position of the OAL has been that the OAL lacks jurisdiction to hear ADA claims: Additionally, even before the immunity of the states was declared to the extent outlined by the U.S. Supreme Court in Garrity [citation omitted], the [OAL] was without authority to hear appeals brought under the ADA. Neither OAL derivatively, nor the MSB through the Civil Service Act have been granted authority thereunder to hear or adjudicate ADA discrimination claims. 42 U.S.C.A. Secs. 12131 through 12213. Lacking subject-matter jurisdiction through its own enabling legislation, or derivatively from the transmitting agency or from the ADA, an [ALJ] is without jurisdiction to make recommended rulings or decisions. In re Uniform Administrative Rules, 90 N.J. 85, 94 (1982) Wood v. Department of Community Affairs, 243 N.J. Super. 187, 196 (App. Div. 1990). [Naranjo v. Dep't of Corr., CSV 6152-00, Initial Decision (December 11, 2001), adopted in part, rejected in part, Comm'r. (April 8, 2002).]

Id. at 30.

As such, the OAL does not have authority to rule on claims that a reduction in PDN hours is a form of discrimination under the ADA and the Rehabilitation Act.

Petitioner also raised a concern as to the adequacy of the Initial Denial Notice because the notice that Horizon provided the Petitioner did not include a copy of the PDN acuity tool used. ID at 6. The ALJ found that the notice provided to the Petitioner explains the basis for Horizon's reduction to sixteen hours of PDN services: its PDN policy and N.J.A.C. 10:60- 5.9(c) that allow a maximum of sixteen hours to the recipient whose live-in adult primary caregiver must provide a minimum of eight hours of care daily. Ibid. The ALJ held that the notice was timely and informed Petitioner of Horizon's intended reduction in services and the reason for the change, Petitioner's fair hearing rights, and the continuation of her services while seeking a fair hearing, in accordance with N.J.A.C. 10:49-14(a,)(sic), and therefore affords Petitioner due process. Ibid. I agree. Both parties stipulated that the reduction to sixteen PDN hours was based on the Petitioner turning twenty-one, not based on a clinical assessment utilizing the PDN acuity tool. The PDN Acuity Tool would only be applicable if it were used to justify the reduction of hours. As such, Horizon's notice was in accordance with N.J.A.C. 10:49-10.4(a).

In the Initial Decision the ALJ found that Horizon did not commit error by reducing the hours of PDN services that Petitioner would receive from nineteen hours to sixteen hours in a twenty-four hour time period. Id. at 14. I agree. According to N.J.A.C. 10:60-5.9(c), PDN services are limited to sixteen hours per day within a twenty-four-hour period. Additionally, N.J.A.C. 10:60-5.9(c)(2) requires that a primary live-in adult caregiver must meet the beneficiary's skilled needs for at least eight hours every day. In T.M. v. Div. of Med. Assistance & Health Servs., 2019 N.J. Super. Unpub. LEXIS 276 (App. Div.), the New Jersey Appellate Division held that a recipient of PDN services under MLTSS was subject to the regulatory proscriptions of N.J.A.C. 10:60-5.9(c), which limits PDN services to a maximum of sixteen hours daily, and requires the primary caregiver to provide a minimum of eight hours of care daily.

The ALJ concluded that Horizon's July 2024 reduction was appropriate and ordered that Horizon was entitled to summary decision as a matter of law. ID at 9. I concur with the findings of the Initial Decision. Petitioner is subject to the regulatory proscriptions of N.J.A.C. 10:60-5.9(c), which limits PDN services to a maximum of sixteen hours daily and requires the primary caregiver to provide eight hours of care daily. Combined, the regulation ensures a total of twenty-four hours of daily care. Furthermore, the Petitioner did not allege any emergency circumstances that would authorize, for a limited time, additional hours beyond the 16-hour limit. Thus, for the reasons stated above, I find that Horizon's reduction of PDN hours in July 2024, was appropriate.

THEREFORE, it is on this 1st day of May 2026,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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