



State of New Jersey

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Division of Medical Assistance and Health Services

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**DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES**

M.A.,

PETITIONER,

v.

HORIZON NJ HEALTH,

RESPONDENT.

ADMINISTRATIVE ACTION

ORDER OF REMAND

OAL DKT. No. HMA 15055-2025

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. None of the parties filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is August 24, 2026, in accordance with an Order of Extension.

This matter arises from Horizon's June 24, 2025, and subsequent July 22, 2025, decision to terminate Petitioner's Private Duty Nursing (PDN) services. After internal and external reviews, Horizon upheld its decision to terminate Petitioner's PDN hours based on the June 16, 2025, assessment. Petitioner appealed the termination of PDN hours, and the matter was transferred to the Office of Administrative Law (OAL) for a hearing, which was held on May 13, 2026.

Petitioner is twenty-three years of age and has been diagnosed with autism spectrum disorder and seizure disorder. P-1. In 2024, Petitioner had been receiving eight hours of PDN services after an external review overturned Horizon's denial of PDN services. R-4. On June 16, 2025, Petitioner was reassessed to determine if continued PDN services were warranted. R-11. While the June 2025 assessment failed to provide a total score based on the categories assessed it did note that "a score of nineteen was needed to meet private duty nursing acuity indication." Ibid. After review of the June 2025 assessment, Horizon determined that PDN services were no longer medically necessary. R-1, R-2. In its June 24, 2025, letter to Petitioner, Horizon explained that the reason Petitioner had been previously approved by an external reviewer in August 2024 was due to seizures (uncontrolled shaking) and the possible need for medicines to stop a very long seizure. R-1. Horizon also explained that a review of the nursing logs provided by the nursing agency did not show any seizure activity or that medication had been administered for a very long seizure. Ibid. Horizon further explained that Petitioner breathes on her own, does not need oxygen therapy, does not have a feeding tube and based on the assessment does not qualify for PDN services. Ibid. Thereafter, Petitioner chose to pursue an external appeal through Maximus Federal Services Inc. (Maximus). On August 4, 2025, Maximus upheld Horizon's decision to terminate Petitioner's PDN services as being not medically necessary. R-3. Based on these denials, Petitioner filed an appeal with the OAL.

During the hearing, Margaret Borelli, Registered Nurse testified for Horizon. Nurse Borelli testified that on June 16, 2025, she performed an assessment on Petitioner using the PDN Acuity Tool. ID at 4. Nurse Borelli testified that the areas considered during the assessment were chest physiotherapy management, nebulizer management, nurse-required seizure management, gastrostomy tube care, respiratory support including

suctioning management and tracheostomy management. Ibid. The results of the assessment showed that Petitioner required a clinical assessment every four hours, suffered with sleep disturbance and woke up every three hours or more per night, required medication administration less than every four hours, required nebulizer treatment every four to twenty-four hours, had mild seizures three or fewer times per week, Petitioner required activities of daily living support for more than four hours per day and required aspiration precautions monitoring and management. Ibid. Nurse Borelli also testified that Petitioner did not need oxygen or tracheostomy management and after putting the data into the tool, Petitioner did not meet the threshold of nineteen to be eligible for PDN services. Ibid.

Dr. Olufunke Olushoga (Dr. Olushoga) also testified for Horizon. Dr. Olushoga testified that she reviewed Petitioner's medical records, including a peer review, PDN assessment, nursing notes and seizure log. ID at 4. Dr. Olushoga also testified that Petitioner's seizures were brief lasting less than three minutes, that Petitioner was not being administered Diastat which is medication administered for seizures lasting more than three minutes and that there was no showing of loss of consciousness or escalation of care. Ibid. Dr. Olushoga further testified that Petitioner was not on a ventilator, did not have a tracheostomy, complicated tube feeding, or around-the-clock chest physiotherapy. ID at 5. Dr. Olushoga reviewed Petitioner's neurology notes from 2022-2024 which "show[ed] stable seizure control on dual anti-epileptic therapy: Lamotrigine 50 mg BID and Valproate 500 mg BID." Ibid. Finally, Dr. Olushoga testified that there was no documentation showing any recent epilepticus or uncontrolled seizure activity, that Petitioner's pediatrician notes for August 27, 2024, to October 30, 2025, did not document uncontrolled seizures, status epilepticus or that the seizure medication dosage had increased. Ibid.

B.A., Petitioner's registered nurse testified on her behalf. ID at 5. B.A. testified that she was Petitioner's nurse from April 2025 to May 2025 and completed the nursing notes with the exception of two dates in April wherein Petitioner had seizures which lasted less than three minutes and did not require any rescue medicine. Ibid. B.A. also testified that from April 20, 2025, to June 10, 2025, she made entries in the seizure log with the exception of four entries which were made by Denise Werrlien, R.N who reported Petitioner's seizures lasting less than three minutes. Ibid. B.A. testified that Petitioner's seizures were being controlled by the seizure medication. Ibid. Lastly, B.A. submitted a note dated April 30, 2026, from Hanane Chaibainou, DNP, Virtua Neurology regarding Petitioner's need for continued home care services. Ibid.

In the Initial Decision, the Administrative Law Judge (ALJ) found that Petitioner's seizures were well controlled with medications. ID at 8. The ALJ also found that although B.A. claims Petitioner had seizures more than three minutes after the nurse's shifts ended, the notes do not reflect such occurrences. Ibid. The ALJ also notes that the pediatrician notes, although hearsay, corroborated the information in the nursing notes and seizure logs and from August 27, 2024, to October 30, 2025, the dosage for Petitioner's seizure medication remained the same. Ibid. Lastly, the ALJ determined that despite the fact that the Plan of Care recommended monitoring for seizure activity, maintenance of seizure and aspiration precautions, these services do not meet the requirements of PDN services per regulation. N.J.A.C. 10:60-5.4(d) and (e). Therefore, the ALJ concludes that Petitioner's condition does not require ongoing complex skilled nursing interventions and does not meet the medical requirements for PDN services. Ibid.

I disagree. Upon review of the evidence, it remains unclear from the record what, if any, changes in Petitioner's medical condition or living arrangements would justify

terminating PDN services at this time. While the Initial Decision notes that "[Petitioner's] seizure frequency and intensity [has] decreased," this does not constitute sufficient detail or supporting evidence to satisfy the contractual standard (described in further detail below) that applies in cases such as these, in which a previous denial of PDN services was overturned.

In addition, the ALJ places emphasis on Petitioner's PDN Acuity score to conclude that Horizon's reduction of PDN hours was appropriate in this matter. 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. Rather, the MCO must demonstrate that the member does not qualify for eight hours per day, seven days per week of PDN services in accordance with the underlying medical necessity standard, as articulated in state regulations, which are described in greater detail below.

The regulations state that private duty nursing services are defined as "individual and continuous nursing care, as different from part-time intermittent care, provided by licensed nurses in the home . . ." N.J.A.C. 10:60-1.2. To be considered for PDN services an individual must "exhibit a severity of illness that requires complex skilled nursing interventions on an ongoing basis." 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). "Ongoing" is defined "as the beneficiary needs skilled nursing intervention 24 hours per day/seven days per week." N.J.A.C. 10:60-5.3(b)(1). 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).

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 anti-convulsants.

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 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).

In addition to these general standards, this case is also subject to specific requirements that MCOs must satisfy when seeking to reverse a past overturn of a denial of services. In this case, Maximus overturned Horizon's previous denial of PDN services in 2024. Since this was less than five years before the assessment under consideration in this case, the following provision of the Medicaid managed care organization (MCO) contract applies:

Utilization Management 4.6.4(D)(2)

2. When a reassessment results in an adverse determination within five years of an overturn (i.e., when an IURO appeal or Fair Hearing results in an full or partial overturn of the Contractor's adverse determination), that new adverse determination must refer to the outcome of the preceding overturn, and describe the change in the enrollee's condition or living arrangements since the overturn that justifies the reduction or termination in services. See N.J. Dep't of Human Servs., Div. of Med. Assistance & Health Servs., *New Jersey Medicaid Managed Care Contract* § 4.6.4 (2025).

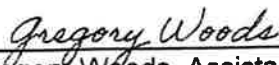
In light of this requirement, the record needs to be further developed to determine whether the termination of Petitioner's PDN services is appropriate. To make this determination, Horizon must provide a detailed explanation of what elements of the 2024 overturn are no longer applicable to Petitioner's current medical condition to warrant a termination of Petitioner's PDN services. In addition, the record should also be developed further to directly address the evidence for medical necessity provided by Petitioner's neurologist.

Thus, based on the record before me and for the reasons enumerated above, I hereby REVERSE the Initial Decision and REMAND the matter to OAL to clarify the above-mentioned issues.

THEREFORE, it is on this 24th day of AUGUST, 2026

ORDERED:

That the Initial Decision is hereby REVERSED as set forth therein.



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