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DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

Z.T.,	:	
PETITIONER,	:	**ADMINISTRATIVE ACTION**
v.	:	**FINAL AGENCY DECISION**
HORIZON NEW JERSEY HEALTH,	:	**OAL DKT. No. HMA 08065-2025**
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. Both parties filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is July 10, 2026, in accordance with an Order of Extension.

This matter arises from Horizon NJ Health's (Horizon) reduction of Petitioner's PDN services from sixteen hours per day, seven days per week, to twelve hours per day, seven days per week. The issue presented here is whether Horizon correctly reduced Petitioner's PDN services under Medicaid regulations.

Petitioner is a twenty-eight-year-old who has been diagnosed with having a history of an unbalanced chromosome translocation resulting in duplication/trisomy of

chromosome 6q23 and deletion/monosomy of 10q26, global developmental delay, hypertrophic cardiomyopathy, prolonged QT syndrome, asthma, GERD, g-tube and wheelchair dependence. R-17. On April 30, 2025, Horizon notified Petitioner of the reduction of PDN services effective April 9, 2025. R-2. Petitioner had received PDN services for sixteen hours per day, seven days per week. Ibid. Petitioner appealed the reduction and the matter was transmitted to the Office of Administrative Law (OAL) where telephone hearings took place on November 7, 2025, and January 6, 2026. ID at 2.

During the hearing, Jacqueline Fenton, Registered Nurse, testified on behalf of Horizon. Nurse Fenton explained that she allocated no credit for blood draws since none needed to be drawn, bowel and bladder training, IVs or infusions, mobility as Petitioner was a self-care patient, no credit was given for nebulizing management as it was "PRN as needed," no credit was given for respiratory support since no CPAP or ventilator was required, no credit was given for wounds, suctioning, or chest as it was "PRN as needed," and there was no tracheostomy. ID at 4. Nurse Fenton also explained that Petitioner has not had a seizure in five years, so the lowest score was given. Ibid. Nurse Fenton explained that she gave credit for nutrition done by g-tube, respiratory management because Petitioner may require oxygen, for lifting Petitioner and splints, range of motion, safety management, for supervision of practicing nurse, because Petitioner was non-verbal, but not communication deficit which applies to communication devices and braille and activities of daily living. Ibid. Nurse Fenton compared the prior Acuity Tests from March 25, 2024, and March 18, 2025, and noted that there were improvements in Petitioner's medical condition. Ibid. Nurse Fenton noted Petitioner's improvements showed that Petitioner suffered no more sleep disturbance, no longer required chest videotherapy management every four hours, no longer required nebulizing and no longer required cast or brace management. R-4, R-5. During cross examination, Nurse Fenton

explained that she was familiar with PDN regulations and was not required to communicate with the patient's caregivers. ID at 5. Nurse Fenton testified that she was aware that Dr. O'Connor had written a letter stating that Petitioner required sixteen hours of daily PDN, but that she relied more on the Acuity Test to determine the need for skilled nursing. Ibid. Nurse Fenton disagreed with Petitioner's counsel on whether there was "sleep disturbance" and explained that the definition of sleep disturbance is waking up three times during night or for a three-hour period which did not apply to Petitioner. Ibid. Nurse Fenton admitted to checking the box for weight at 55 to 125 pounds but documented that Petitioner's weight was 145. ID at 6. Nurse Fenton testified that she did not know if the weight difference would have changed Petitioner's overall score. Ibid. Based on the assessment, Petitioner's score was 28.5, which shows a range of 8 to 12 PDN hours. R-6.

Dr. Olufunke Olushoga (Dr. Olushoga) also testified for Horizon. Dr. Olushoga testified that the proposed reduction to Petitioner's PDN was upheld by two internal reviews and an external review. ID at 6. Dr. Olushoga testified that she reviewed prior notes, PDN assessments, regulations and that there was no requirement for her to speak to Petitioner's grandmother. Ibid. Dr. Olushoga also testified that N.J.A.C. 10:60-5.9 lists the items to review and that medical necessity is required. Ibid. Dr. Olushoga testified that Petitioner had no mechanical ventilator, tracheostomy, deep suctioning or around the clock nebulizing. Ibid. Dr. Olushoga explained that Petitioner was fed by g-tube, but there was no proof of regurgitation or aspiration. Ibid. Lastly, Dr. Olushoga testified that Petitioner did have a seizure disorder but there was no record of rescue medications. Ibid. During cross examination, Dr. Olushoga testified that the Acuity Tool itself did not consider caregiver needs and that decision letters were not "statutorily required to list situational criteria only medical necessity, but that the March 2025 assessment did take

into account situational needs." R-6, R-7. Finally, Dr. Olushoga testified that she agreed with the Acuity Tool score and confirmed compliance with New Jersey law and regulations. ID at 6.

In the Initial Decision, the Administrative Law Judge (ALJ) found that Petitioner met the threshold for PDN services. ID at 12. The ALJ determined that Respondent offered credible testimony and considered Petitioner's improvements since the March 25, 2024, assessment finding that Petitioner suffered no more sleep disturbance, no longer required chest videotherapy management every four hours, no longer required nebulizing, that credit for cast and brace were no longer applicable so was not credited and was not given credit for suctioning since that was now "PRN as needed." R-13. The ALJ also determined that Respondent "clearly documented Petitioner's improvements in its March 2025 assessment and thus complied with the prerequisites for reducing PDN services." Ibid. The ALJ further determined that Respondent considered Petitioner's Acuity Test score, situational factors and improvements in Petitioner's medical condition. Ibid. The ALJ determined that Respondent provided Petitioner with the higher range of daily PDN hours even though the scores showed a range of eight to twelve hours. Ibid. Finally, the ALJ concludes that Respondent met its burden of proof by a preponderance of the evidence; that Petitioner is only entitled to eight to twelve hours of PDN services and that Horizon's reduction to twelve hours per day was appropriate. ID at 14.

Both parties filed exceptions in this matter. First, Respondent argues that Horizon met its burden of proof. I agree. The ALJ determined that Nurse Fenton and Dr. Olushoga testified credibly. The ALJ found that Nurse Fenton was familiar with the PDN process and that her testimony was clear and detailed. Likewise, the ALJ determined that Dr. Olushoga was highly experienced and demonstrated a thorough understanding

of the governing regulations. A review of the evidence shows a change in Petitioner's medical condition warranting a reduction. To be specific, Petitioner no longer suffers with sleep disturbance, no longer requires chest videotherapy management every four hours, no longer needs nebulizing, suctioning has been reduced to "PRN as needed," credit for cast and brace management were no longer applicable but credit was provided for splints because Petitioner uses arm braces. The ALJ found that there was competent evidence in the record to make factual findings regarding Horizon's determination that Petitioner's PDN hours should be reduced from sixteen hours per day, seven days per week, to twelve hours per day, seven days per week.

Second, Respondent argues that the ALJ was correct to preclude the Petitioner's witnesses. While the ALJ has the discretion to preclude witness testimony, that discretion is not unlimited. Any decision to exclude testimony must be reasonable, non-arbitrary and based on the specific facts and circumstances of the case. Here, Petitioner's grandmother testified on January 6, 2026. However, her testimony was not preserved due to technical difficulties beyond her control, not because of any failure to appear or comply with the court's initial order. With that said, the Initial Decision identifies February 17, 2026, and February 26, 2026, as additional dates in which Petitioner was scheduled to testify since her testimony was not preserved. The ALJ acted within his discretion in excluding the grandmother's testimony after she repeatedly failed to appear for scheduled hearings. The record demonstrates that the ALJ balanced fairness to Petitioner with the need for the efficient administration of the proceedings by scheduling two additional dates.

Petitioner also filed exceptions in this matter. First, Petitioner argues that Petitioner's situational factors favor not reducing Petitioner's PDN hours. While

situational factors may be considered in evaluating an individual's overall care needs, they do not override the requirement that PDN services be authorized based on medical necessity.

Second, Petitioner argues that Horizon's adverse actions were based on the results of the Acuity Tool without considering other factors besides the fact that Petitioner resided with his grandmother. I disagree. While the Acuity Tool appears to have served as one component of the clinical assessment, Respondent also considered Petitioner's improvements along with the fact that Petitioner resided with his eighty-two-year-old grandmother which is why the higher end of twelve hours of PDN services was authorized.

Third, Petitioner argues that Respondent failed to satisfy its burden of proof by clearly documenting in the Notice of Action (NOA) any improvement to Petitioner's medical condition that would support a reduction of PDN hours. I disagree. Respondent has complied with the mandates set forth in the NOA. A side-by-side comparison of the March 2024 assessment wherein sixteen hours were authorized and subsequent assessment conducted in April 2025 clearly documents and details changes in Petitioner's condition. Several specific differences between the two assessments demonstrate that during the March 2024 assessment, Petitioner required chest physiotherapy, routine oxygen at least weekly, suctioning, cast or brace management, communication deficit management and experienced sleep disturbances. Since that time, Petitioner's condition has improved significantly. These needs are no longer reflected in the April 2025 assessment indicating that that have been resolved or are no longer clinically necessary. These improvements are also clearly documented in the March 27, 2025, Notice of Action letter which reads in relevant part as follows:

> The reason for this action is: The request for Private duty nursing (PDN) services 16 hours per day, 7 days a week is denied. Private duty nursing is for members with extensive skilled needs (i.e. prolonged seizures, vent management, complicated tube feeds, etc). You do not require the help of a breathing machine (ventilator). You do not breathe through a hole in your neck (tracheostomy). You do not require oxygen support all through the day (only as needed). You do not receive medicines by vein. The notes provided do not show that you are receiving chest physical therapy or suctioning. They do not show [a] need for nebulizer treatments. You require monitoring for seizures. You receive medications and feeds through a stomach tube (G-tube). You require aspiration (breathing in food or drink) precautions. You require custodial care -hands-on-assistance with all activities of daily living and feeding. Custodial care does not require a licensed nurse and can be provided by a trained caregiver. Based on this information you have been approved for 12 hours per day, seven days per week of private duty nursing services.

Fourth, Petitioner argues that the ALJ's statement that "[t]he entirety of petitioner's case was that respondent relied solely on its Acuity Test and did not consider situational factors" excludes arguments made in the post hearing brief wherein Petitioner's also argued that Petitioner disagrees with the scoring of the tool in five different areas which include sleep disturbance, communication deficit management, cast or brace management, lift, partial or total, weight of more than 125 pounds and clinical monitoring. A review of the ALJ's statement in its Initial Decision seems to suggest that the ALJ's statement was made in the context of summarizing Petitioner's principal theory of case and did not appear to preclude consideration of Petitioner's additional arguments.

Fifth, Petitioner argues that the court violated Petitioner's right to due process by refusing to permit the testimony of any of Petitioner's witnesses. The ALJ acted within his discretion to manage the hearing by excluding witnesses whose testimony was irrelevant, cumulative, or untimely disclosed. N.J.S.A. §52:14B-10(a). Petitioner's grandmother failed to appear on either of the two additional dates provided by the court,

offered no timely good cause for her absence and failed to comply with the court's instruction to provide evidence within twenty-four hours regarding the failure to appear on the February 26, 2026, hearing date. A two-week delay in providing the court with important information about Petitioner's failure to appear on the aforementioned date seems unreasonable. With regard to the other witnesses proffered by Petitioner, namely Rebecca Kahane (Ms. Kahane), Bayada's Division Director, Christian Kanu (Mr. Kanu), Clinical Case Manager and Dr. Lerner, the ALJ found that they either were not offered as expert witnesses, lacked personal knowledge of the Petitioner's condition during the relevant time period, or provided hearsay testimony. While hearsay evidence is admissible in these types of proceedings, there must be some legally competent evidence to support each finding of fact which must be reliable and avoid any appearance of arbitrariness. N.J.A.C. §1:1-15.5.

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).

Since medical necessity for PDN services has been established, Petitioner's family situation becomes relevant. N.J.A.C. 10:60-5.4(c)(1)(i). Here, Petitioner's situational

factors were considered when Horizon authorized the higher range twelve PDN hours after considering Petitioner's grandmother's age of eighty-two. To that extent, Petitioner's family situation was viewed in accordance with the regulations to determine PDN hours based on these set of facts. N.J.A.C. 10:60-5.4(a)(3).

Accordingly, for the reasons set forth above, I hereby ADOPT the Initial Decision and FIND that Horizon's reduction of PDN services was appropriate in this matter.

THEREFORE, it is on this 10th day of JULY, 2026

ORDERED:

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

Jonathan Tew obo Greg Woods
Gregory Woods, Assistant Commissioner
Division of Medical Assistance and Health Services