

L.V. began receiving had been receiving private duty nursing (PDN) and personal care assistance (PCA) services under a Home and Community-Based Waiver, known as Community Resources for People with Disabilities (CRPD). Beginning July 1, 2014, participants in Home and Community-Based Waivers, including CRPD, were encompassed in the Comprehensive Medicaid Waiver, and enrolled in Managed Long Term Services and Supports (MLTSS) which allows Medicaid managed care organizations (MCOs) to manage home and community based services for enrollees. Significantly, eligibility for a Home and Community Based Waiver, like CRPD, permitted adults over the age of 21 to receive PDN, a service which was previously only available to Early and Periodic Screening, Diagnostic and Treatment (EPSDT) program beneficiaries. Under the EPSDT program, children under the age of 21 are eligible to receive any medically necessary service, including PDN, in accordance with federal guidelines. Petitioner's sole argument that the medical necessity criteria to qualify for PDN services under the EPSDT program are inapplicable to Petitioner is that the criteria delineated in N.J.A.C. 10:60-5.4 only apply to individuals who are under age 21 and Petitioner is 28. Instead, Petitioner argues that the regulations addressing the CRPD waiver should be used to determine if an adult is eligible for PDN services. However, the CRPD regulations only state that PDN is a service available to CRPD beneficiaries, without setting forth any criteria. Because the regulations addressing PDN services under the EPSDT program are in accordance with federal guidelines, I agree with the ALJ that it is reasonable to use the medical necessity criteria set forth in N.J.A.C. 10:60-5.4 to determine if Petitioner is eligible for PDN services. Moreover, the identical

criteria set forth in N.J.A.C. 10:60-5.4 are already included in the MCO Contract (See Article 9, page 8) as well as in the proposed MLTSS regulations, which were published in the New Jersey Register on August 21, 2017 and are open for public comment until October 20, 2017. See 49 N.J.R. 2698(a).

The purpose of private duty nursing services is to provide "individual and continuous nursing care", as opposed to "part-time intermittent care". N.J.A.C. 10:60-5.1(b). In order to be considered for private duty nursing 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).

Moreover, the regulations addressing the medical necessity for private duty nursing services state that patient observation, monitoring, recording and assessment may constitute a need for private duty nursing services provided that the beneficiary is ventilator dependent, has an active tracheostomy and needs deep suctioning. N.J.A.C. 10:60-5.4(b)(1). Medical necessity may also be established if the individual needs around-the-clock nebulizer treatments, with chest physiotherapy; gastrostomy feeding when complicated by frequent regurgitation and/or aspiration; or a seizure disorder manifested by frequent prolonged seizures, requiring emergency administration of anti-convulsants. N.J.A.C. 10:60-5.4(b)(2). Petitioner's BiPAP machine does not constitute mechanical ventilation. Additionally, Petitioner does not have an active tracheostomy, nor does he require deep suctioning or around-the-clock nebulizer

treatments. He does not require gastronomy feedings nor does he have a seizure disorder. Petitioner's overnight care needs are essentially comprised of monitoring while he sleeps and occasional suctioning. However, the regulations clearly state that PDN services are not available for observation, monitoring or assessment. Thus, I agree with the ALJ that Petitioner has not demonstrated that he requires skilled nursing services on an ongoing basis. The possibility that Petitioner may need his BiPAP mask adjusted or occasional suctioning during the night does not in and of itself satisfy the threshold eligibility requirement for PDN services.

THEREFORE, it is on this *3rd* day of October 2017,

ORDERED:

That the Initial Decision affirming the termination of PDN services is hereby ADOPTED.


Meghan Davey, Director
Division of Medical Assistance
and Health Services