

her home in New Jersey prior to attending a university out of state. Under this program, children under the age of 21 are eligible to receive any medically necessary service. Petitioner continued to qualify for the EPSDT program during the 2017-2018 academic year. At the time of matriculation, Horizon had approved Petitioner for 10 hours of daily PDN services and 6 hours of daily PCA services. During her first semester, these services were performed by a private agency. However, Petitioner experienced problems with this agency, and as a result, contacted the New Jersey Division of Disability Services (DDS) which administers the Personal Preference Program (PPP) that allows members to self-direct their PCA services.

In an attempt to accommodate Petitioner's situation, it appears she was permitted to renounce her PDN hours in favor of additional PCA hours. This is reflected in January 18, 2018 PCA nursing reassessment, the first assessment performed while Petitioner was a university student, which states:

PCA Tool score is 42.25. Member is receiving 16 hours PPP per day as her PPP hours replace PDN hours and recommended to continue with existing hours.

The next two assessments, including the one currently at issue, reflect a similar need for 50 PCA hours per week.¹ However, due to Petitioner's specific needs the medical director afforded Petitioner an additional 20 hours per week for a total of 70 weekly PCA hours. Consequently, the current assessment reduced the PCA hours from 112 to 70 hours per week and did not reflect an exchange of PDN hours for PCA hours. The dispute in this matter focuses on the amount of PCA hours awarded, and whether Petitioner can exchange medically approved PDN hours for self-directed PCA services.

¹ The May 16, 2018 assessment showed a total of 49.17 PCA, and the November 21, 2018 assessment showed a total of 48 PCA hours.

PCA services are non-emergency, health related tasks to help individuals with activities of daily living (ADLs) and with household duties essential to the individual's health and comfort, such as bathing, dressing, meal preparation and light housekeeping. The decision regarding the appropriate number of hours is based on tasks necessary to meet the specific needs of the individual and the hours necessary to complete those tasks. Personal care assistance services shall not be approved or authorized when the purpose of the request is to provide supervision or companionship. N.J.A.C. 10:60-3.8(c).

Conversely, 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). 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). While PCA services can be performed by a private duty nurse, "PDN services must be provided by a licensed certified home health agency...and licensed nurses in the home..." N.J.A.C. 10:60-5.1(a),(b). Accordingly, medically necessary PDN services cannot be exchanged for PCA services.

Petitioner has engaged university nursing students to assist with her health care needs.² They are not employed by a licensed certified home health agency and are not yet licensed nurses. As a result, they may not be employed as private duty nurses for Petitioner. The nursing students may perform PCA services at Petitioner's direction through the PPP. However, those hours are determined by the PCA assessment tool.

Here, the PCA assessment tool determined that Petitioner was in need of 50 PCA hours per week. The medical director afforded Petitioner an additional 20 hours based on her specific needs. Nothing provided by the Petitioner supports a different conclusion. Petitioner alone testified at the hearing. There was no testimony by either her physician or any of her caretakers. The July 2, 2018 letter of medical necessity from Petitioner's physician clearly makes a case for "a private duty nurse to assist in her respiratory protocol [at night] and overnight monitoring."³ It also states that Petitioner "needs help with ADLs during the day and breathing treatments during the day." However, it neither addresses the PCA assessment, nor does it provide a suggested amount of daily PCA hours necessary to meet Petitioner's needs.

According to the Petitioner's physician, her medical need is such that she requires PDN services. PDN services must be performed by a licensed nurse, not an unlicensed, university nursing student. PCA services, however, do not require a license and may be performed by a person of Petitioner's choosing through the PPP. Because of the distinction of the level of care, the type of services being provided, and PDN services cannot be renounced or exchanged for PCA services. The amount of PCA

² The time sheets submitted by Horizon show the nursing students performing PCA services. However, Petitioner testified that she needed overnight care, including respiratory protocol and monitoring, which she would not be able to receive if her PCA hours were reduced.


³ As previously stated, private duty nursing services cannot be performed by an unlicensed individual who is not employed by a licensed home health care agency pursuant to N.J.A.C. 10:60-5.1(a),(b).

services required by Petitioner was determined in accordance with the PCA assessment tool. Petitioner has presented no evidence that the 70 weekly PCA hours are insufficient to meet her PCA needs.

THEREFORE, it is on this 17th day of MAY 2019,

ORDERED:

That the Initial Decision is hereby REVERSED and that Horizon's determination that Petitioner is entitled to 70 PCA hours per week is upheld.



Richard Hurd, Chief of Staff
Division of Medical Assistance
and Health Services