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STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

D.C.,
PETITIONER,
v.
HORIZON NJ HEALTH,
RESPONDENT.

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ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 5296-2017

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the OAL case file, the document in evidence and the Initial Decision. Respondent filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Decision is January 17, 2019 in accordance with an Order of Extension.

This matter concerns the termination of Petitioner's inpatient subacute rehabilitation services (skilled rehabilitation) after a review by Horizon NJ Health. Petitioner has been residing in a nursing home after suffering a traumatic brain injury

(TBI) in March 2016. Horizon NJ Health is the Managed Care Organization (MCO) that manages his Medicaid benefits. On April 3, 2017 Horizon NJ Health issued a Stage 1 Appeal to uphold the denial of inpatient skilled rehabilitation. Petitioner had been receiving skilled rehabilitation services, however, there was no indication that Petitioner was improving. It was determined that continued skilled rehabilitation was no longer medically necessary. J-3. Rather Petitioner could receive maintenance therapy in a long term care facility. For the reasons that follow, I hereby REVERSE the Initial Decision and uphold the denial of skilled rehabilitation as of April 2017.

Skilled rehabilitative therapy must be periodically reassessed to determine medical necessity. As such Horizon uses the Milliman Care Guidelines (MCG), Medical Admission Recovery Facility Care which is reasonable to ascertain medical necessity. Petitioner's reliance on a Departmental Appeals Board decision fails to note that the MCG, while not binding for coverage purposes, are "used by CMS and CMS-contracted Quality Improvement Organizations". In re Providence Health Center, Docket number M-11-1217, decided July 13, 2012, at fn. 4. In that case the MCG were offered to support the Medicaid provider's claim that an inpatient stay should have been covered after denied by CMS. The use of MCG instead has been noted in other court decisions as a neutral standard for providers. See Norfolk Cty. Ret. Sys. v. Cmty. Health Sys., 877 F.3d 687, 690 (6th Cir. 2017). The record shows that the MCG utilized here contains 124 references to what appear to be peer reviewed articles as well as CMS reports. R-1.

I FIND that the record, including the expert testimony, supports the April 2017 finding that skilled rehabilitation was no longer medically necessary and was not needed to maintain Petitioner's condition or to prevent or slow further deterioration. Horizon's

two expert witnesses, Matthew Toohey, M.D. (Toohey) and Arvind Baliga, M.D. (Baliga), reviewed Petitioner's chart with regard to his care at the nursing facility. That review as well as one conducted by an independent peer review service found that that Petitioner's needs for maintaining range of motion and flexibility could be done in the facility's long term care unit.

To that end, I cannot discern why R-5, which contains nine sub-exhibits of Petitioner's medical records and charts, was permitted into evidence yet the documents identified as R-6 to R-10 were not. ID at 13. They are similar if not the same types of medical records but prepared at different times. The included and excluded exhibits are parts of Petitioner's chart such as physician orders, nursing notes and progress reports. Petitioner even used R-6 during cross-examination and his own witness's December 26, 2017 letter is contained within R-6. TR. February 6, 2018 at 98. Under the business records exception to the hearsay rule, medical records are admissible to prove the truth of the matters stated therein, when made by someone "with actual knowledge or from information supplied by such a person"; "at or near the time of observation"; and "in the regular course of business." N.J.R.E. 803(c)(6). As the ALJ accepted the nearly identical records contained in R-5 which were authored by the same individuals, there is no reason to omit R-6 through R-10. Thus, I FIND that those documents are part of the record.

Subsequent to this determination Petitioner began seeing Elliot Bodofsky, MD (Bodofsky) and receiving Botox treatment. The Initial Decision's reliance on Bodofsky's testimony and progress notes is misplaced as they relate to the April 2017 determination that skilled rehabilitation was no longer medically necessary. The "progress through skilled therapy" is based on examinations in July 2017 after Botox

had been administered in June 2017. P-2 and P-3. This treatment and its results comprises a large part of Bodosky's testimony without addressing if, prior to this treatment, Petitioner was no longer in need of skilled rehabilitation. Tr. (February 6, 2018) at 194. Moreover, Bodofsky was told that therapy was being given five times a week through 2017 but only prescribed a reduced three times a week in January 2018. P-6.

It is clear that Bodofsky's medical conclusions did not relate to Petitioner's condition in April 2017. TR (February 6, 2018) at 224 – 227 and 236. As such, while Horizon was correct in assessing Petitioner's condition prior to April 2017, the Botox injections may have given rise to a determination of medical necessity for skilled rehabilitation post May 2017. However, any potential subsequent period for skilled rehabilitative therapy would have ended in June 2018. TR (February 6, 2018), p.237. ID at 10. The record contains no updated medical information since the February 2018 hearing dates.

Due to the continuation of benefits pending the fair hearing as well as the delay from the last hearing date to this Final Agency Decision, Petitioner's current status must be reassessed. At this point Petitioner will have been receiving inpatient subacute rehabilitation services for nearly two years.

THEREFORE, it is on this 15th day of JANUARY 2019,

ORDERED:

That the Initial Decision is hereby REVERSED with regard to Horizon's decision regarding skilled rehabilitative therapy was correct at the time it was rendered; and

That Horizon NJ Health shall assess Petitioner's current condition within four weeks of this decision to determine the present medical necessity for skilled rehabilitation.



Meghan Davey, Director
Division of Medical Assistance
and Health Services