

Petitioner is eighteen years old and has short bowel syndrome secondary to jejunal atresia. ID at 2 Petitioner's brief Exhibits 1 and 3. As a result for a new period of service requested by Star Pediatric Home Care Agency, United Healthcare determined that Petitioner required eight hours of PDN hours seven days a week. Petitioner sought this appeal.

At the hearing Petitioner filed a motion for summary decision claiming that her PDN services cannot be reduced "because the reassessment for medical necessity requires a face-to-face encounter" pursuant to N.J.A.C. 10:60-5.5(f). Petitioner claims that DMAHS guidance issued October 15, 2020 regarding outpatient services which require face-to-face assessments are to be extended with no reductions in services until the end of the Public Health Emergency" applies to Petitioner's case. The ALJ concurred that Petitioner's argument was correct and reversed the reduction of PDN hours based on that guidance. For the reasons that follow, I hereby REVERSE and REMAND the matter for a proceeding on the underlying substantive determination regarding the assessment that Petitioner's condition warranted a reduction in PDN hours.

The guidance cited by Petitioner does not prohibit the reassessment of Petitioner's authorization for PDN hours. As United Healthcare argued, the face-to-face assessment for PDN services was performed by nurses who were in the home. The rules to reauthorize PDN services does not require the MCO to send an outsider into the home but rather uses the clinical records and assessments that are done by the nursing staff performing the service. The October 15, 2020 guidance did not suspend the regulatory requirement that the nursing agency maintain clinical records including the "documentation of all care rendered" and reassessments of the beneficiary. N.J.A.C. 10:60-5.6. Those required records would then form the basis for the authorization of services. N.J.A.C. 10:60-5.5 Thus, I FIND that United Healthcare was permitted to take action on Petitioner's PDN hours based on clinical records required to be maintained by the PDN agency.

The Initial Decision incorrectly finds support in C.S. vs. Horizon, Dkt. No. HMA 1517-2020 which concerns the reduction in Personal Care Assistance (PCA) hours; not PDN hours. PCA services need not be performed by a nurse but can be performed under the supervision of a registered nurse. See 10:60-3.5. In fact, family members can provide PCA services under the Personal Preference Program (PPP). N.J.A.C. 10:142-1.1 et seq. The assessment and reauthorization for PCA services is done by a nurse from the Managed Care Organization and places another individual in the home to make that assessment. N.J.A.C. 10:60-3.5(a)3. It is that re-authorization process that was suspended under the October 15, 2020 guidance.

I FIND no support that the affirmance of the decision to reduce PDN hours in N.S. v. United HealthCare, Dkt. No. HMA 712-2021 failed to consider the October 2020 policy because the Petitioner was pro se and did not raise the issue as a defense. ID at 10. The decisions in that matter upheld the reduction because the October 2020 policy did not apply to PDN services. As noted by United HealthCare in exceptions, the agency head has the authority to adopt, modify or reject the Initial Decision including the “interpretations of agency policy in the decision”. N.J.S.A. 52:14B-10 (c). When the termination of PCA services was upheld by the ALJ in C.S. vs. United HealthCare, the Final Agency Decision reversed that decision by finding that that PCA hours could not be reduced due the agency policy regarding the face-to-face requirement. Since the agency policy does not place a prohibition on PDN hours, N.S. was decided based on the clinical notes, assessments and testimony.

Thus, for the reasons stated above I FIND that Petitioner was properly reassessed and the proposed reduction is permissible under the agency guidance. The Initial Decision is hereby REVERSED as it incorrectly applies the guidance to PDN reassessments. The matter is hereby REMANDED to OAL for a hearing on the substantive issue of the reduction of PDN hours.

THEREFORE, it is on this 18th day of NOVEMBER 2021,

ORDERED:

That the Initial Decision is hereby REVERSED; and

That the matter is REMANDED to OAL for further proceedings.



Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance and Health Services