

a request for additional hours which was denied. In December 2020, during a recertification, PDN hours were reduced to twelve hours per day, seven days a week with no additional hours. Petitioner appealed both determinations which were consolidated by the OAL.

Petitioner is seven years old and has a rare degenerative metabolic condition that causes neurological and physical impairments. She has a gastrostomy feeding tube that is continuous at night with two feedings during the day. ID at 5. She is also prone to aspiration, choking and seizures. ID at 11. The request for additional hours was denied as the nursing notes did not support a need for an increase. In the course of reassessing Petitioner, United HealthCare reviewed the nursing notes, the Plan of Care and, with the use of an acuity tool, determined that Petitioner's hours should be reduced to twelve hours a day, seven days a week with no additional hours for non-school weekdays. Petitioner sought appeals of both decisions.

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).

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).

The Initial Decision determined that the reduction of PDN hours by United HealthCare was not supported by the record and the hours previously awarded should remain. For the reasons that follow, I hereby ADOPT the Initial Decision with a clarification that the record supports reinstatement of the prior hours and references to eighteen hours represent the total hours authorized on non-school weekdays.

The record consists of Petitioner's nursing notes and the hearing testimony of Amy Aronsky, D.O., the Medical Director for United HealthCare and Petitioner's physician, Marc Yudkoff, M.D. Dr. Aronsky testified as a medical expert regarding her review of the nursing notes prepared by Bayada, the nursing agency that staffs Petitioner's PDN hours and the use of an acuity tool to determine PDN hours. To that end, the determination was made that Petitioner's PDN needs could be met by twelve hours a day with no additional hours on non-school weekdays. ID at 5 - 6. Petitioner's hours remained at the prior level during the course of the hearings.

Dr. Yudkoff's testimony at the hearing was an expert in metabolic disease and although he was neither her treating physician nor the ordering physician for the certification and plan of care, as a metabolic specialist, he has treated Petitioner for most of her life. ID at 7 and R-3. He testified that Petitioner's seizure disorder is difficult to control even with "heavy-duty anti-convulsant drugs" and she has been placed on a ketogenic diet which he described as a "last resort in controlling seizures." ID at 8. He described the difficulties Petitioner's treatment which included risk of aspiration and breakthrough seizures due to her severe neurological and physical impairments. It was his recommendation that Petitioner's hours be restored. T-61 at 19-21.

Based on the unique facts and circumstances presented in this case, I FIND that the testimony from Dr. Yudkoff deserves more weight regarding Petitioner's rare and serious disease and her manifest need for PDN hours. His conclusion that her PDN hours should be restored to twelve hours a day, seven days a week with an additional six hours non- school weekdays is appropriate and supported by the record. Thus, for the reasons stated above I hereby ADOPT the Initial Decision.

THEREFORE, it is on this 28th day of NOVEMBER 2021,

ORDERED:

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



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