

from 12 hours to 8 hours per day. The ALJ affirmed United Healthcare's determination, and based upon my review of the record, I find no reason to disturb that decision.

The purpose of PDN services is to provide individual and continuous nursing care by licensed nurses in the home. N.J.A.C. 10:60-5.1(b). 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). There is no question here that Petitioner's condition rises to the level of medical necessity required to receive PDN services. Rather, the issue here is whether Petitioner's condition requires twelve or eight daily hours of PDN services.

The evidence in the record indicates that Petitioner's condition has improved over the last four years. Diane Bock, R.N., testified that Petitioner:

K.R. has been weaned off the breathing machine...[,] has a hole in his neck but does not need any oxygen...[,] breathing is better...[,] eat most food by mouth...[,] gets food through a tube in the stomach...without a problem...[,] has not had seizures lately...[and] has not been in the hospital recently.

This is not disputed by Petitioner's caregiver. He acknowledged that Petitioner has not experienced seizures and does not need to use a breathing machine. Rather, he stated that his main concern was feeding Petitioner, and he believes that Petitioner's food intake can only properly be overseen by PDN. However, he has admitted that he has been trained to properly feed his son and change the feeding tube.

The determination of EPSDT/PDN hours approved "shall take into account the primary

caretaker's ability to provide care, as well as alternative sources of PDN care available..."
N.J.A.C. 10:60-5.4(a). Additionally, in determining the extent of the need for EPSDT/PDN services and the hours of service, the work related or sibling care responsibilities are considered as well as any additional care support within the household. N.J.A.C. 10:60-5.4(c). Here, in addition to Petitioner's health improving, the evidence in the record shows that there are several other adults in the household, including Petitioner's mother and grandmother, to assist with Petitioner's care.

THEREFORE, it is on this 17th day of FEBRUARY, 2021

ORDERED:

That the Initial Decision is hereby ADOPTED.



Jennifer Langer Jacobs, Director
Division of Medical Assistance
and Health Services