

number of hours is based on the tasks necessary to meet the specific needs of the individual and the hours necessary to complete those tasks. Once PCA services are authorized, a nursing reassessment is performed every six months, or more frequently if warranted, to reevaluate the individual's need for continued care. N.J.A.C. 10:60-3.5(a)3; J.R. v. Div. of Med. Assist. & Health Servs. and Div. of Disability Servs., No. A-0648-14 (App. Div. April 18, 2016). (Op. at 9).

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.

That Petitioner's medical condition is serious and requires private duty nursing (PDN) services is not in dispute.¹ Petitioner is authorized for, and had been receiving, eight hours per day of PDN services.² However, during the COVID-19 pandemic, Petitioner's mother refused services due to her concern that her child was compromised and could be infected by anyone outside the household. Instead, she sought to be compensated through the

¹ There is no evidence in the record that Horizon was not aware of Petitioner's medical conditions as they are listed in the PCA assessment.

² Petitioner was also receiving up to six hours of services each day at her school, which serves individuals with a diverse array of developmental disabilities.

Personal Preference Program (PPP) which is administered by DMAHS and allows Medicaid recipients to direct and manage their PCA services. The PPP does not include PDN services.

Licensed nurses, employed by a licensed agency or healthcare services firm approved by DMAHS, may provide PDN services in the home to beneficiaries receiving managed long-term support services (MLTSS) and Early and Periodic Screening Diagnostic and Treatment (EPSDT) beneficiaries. N.J.A.C. 10:60-1.1(a),(b). Because PDN services exceed normal parental and/or familial responsibilities, family members who are licensed RNs or LPNs in the State of New Jersey may be employed by the agency authorized to provide PDN services to the beneficiary. N.J.A.C. 10:60-1.1(c). While I am sympathetic to her concern, Petitioner's mother, who is not a licensed nurse, cannot be compensated by the State of New Jersey for performing nursing tasks. Because of the distinction of the level of care and the type of services provided, PDN services cannot be exchanged for PCA services. However, Petitioner's mother can perform PCA services and be compensated through the PPP program. The amount of PCA services required by Petitioner was determined in accordance with the state approved PCA assessment tool.

On March 27, 2020, Horizon assessed the then three-year-old Petitioner using the State-approved PCA nursing tool and determined that she did not require PCA services. The PCA tool was completed over the phone with information provided by Petitioner's mother. To qualify for PCA services, beneficiaries "must be in need of moderate, or great, hands-on assistance in at least one ADL, or minimal assistance or greater in three different ADLs, one of which must require hands-on assistance." N.J.A.C. 10:60-3.1(c)1. Assistance with Instrumental Activities of Daily Living (IADL), such as meal preparation, laundry, housekeeping/cleaning, shopping or other non-hands-on personal care tasks shall not be permitted as a stand-alone PCA service." N.J.A.C. 10:60-3.1(c)1. In other words, if a beneficiary does not require the minimum amount of ADLs, they do not qualify for PCA services, even if they may have assistance needs with IADLs.

Petitioner did not meet the requirements for five of the eight ADL categories (bathing,

feeding, toileting, personal hygiene, dressing) because these are tasks, which regardless of an individual's medical condition, would be provided by a parent/caregiver due to the individual's age. The remaining three categories (ambulation, transferring and positioning) were originally assessed at zero, but were reviewed and corrected to reflect the maximum amount for seven days a week. As with the ADL categories, Petitioner did not qualify for four of the five IADL categories due to her age. However, petitioner was found to need the maximum allotment for bed linen changes. Accordingly, the September 9, 2020 review and assessment reflects the correct award of 14 PCA hours per week. The medical records provided by Petitioner do not refute Petitioner's needs in the assessed categories.³

Petitioner was determined eligible for both PDN and PCA services through Medicaid. Petitioner's family's concerns about allowing a nurse in to the home during the COVID-19 pandemic are understandable, but the assessment tool utilized to assess Petitioner is specific to PCA services. Because of the distinction in the level of care and the type of services provided, DMAHS cannot treat PDN and PCA services as interchangeable. Likewise, DMAHS is unable to modify the rules of the statewide PPP to meet an individual need.

THEREFORE, it is on this 24th day of AUGUST 2021,

ORDERED:

That the Initial Decision is hereby REVERSED and that Horizon's determination that Petitioner is entitled to 14 PCA hours per week is upheld.



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

³ Petitioner provided an April 5, 2019 report from a pediatric ophthalmologist; a May 5, 2019 sleep study, and a December 12, 2016 discharge summary.