



eight hours per day, seven days per week.

Petitioner is, now, nine years old whose medical history includes a traumatic brain injury, quadriplegia, blindness, seizures, gastroesophageal reflux, eosinophilic esophagitis, bowel and bladder incontinence, and contractures. R-7. Petitioner has a gastrostomy tube (GT) for feeding and medication administration. Ibid. Petitioner began receiving PDN services of at least twelve hours per day, seven days per week from Bayada Home Health Care (Bayada) beginning on or about September 11, 2018. Ibid. Petitioner's Plan of Care (POC), prepared by Bayada for the certification period of December 15, 2020 through February 12, 2021, provides that Petitioner is at risk for injury, hypoxia, or aspiration and must be monitored for loss of consciousness with seizure activity. R-1. Petitioner receives formula through his GT four times per day, but is also offered purred food by mouth. Ibid.

The PDN recertification form, also prepared by Bayada and dated November 30, 2020, identifies tube feeding, aspiration precautions, and seizure precautions as Petitioner's skilled nursing needs. R-2. It additionally provides that Petitioner's last known seizure was on February 25, 2020. Ibid. His unskilled needs were identified as bladder and bowel incontinence, mobility limitations, and communication deficit due to Petitioner being nonverbal. Ibid.

On December 8, 2020, Dr. Nicole Ryan assessed Petitioner during a home visit and in her report stated that Petitioner was tolerating his feedings by mouth as well as his tube feedings. R-3. She additionally noted that Petitioner had not had a seizure within the past thirty days and had no recent hospitalizations or emergency room visits. Ibid. The Nurses Shift Notes from December 6, 2020 through December 20, 2020 additionally showed no complications with feedings or seizures. R-4.

In reviewing the matter for a new authorization, United determined that twelve hours of PDN services per day, seven days per week, were not medically necessary. United based

its decision on Petitioner tolerating his feedings and being seizure free for a period of six months.<sup>1</sup> R-5. As a result, United determined that Petitioner's PDN hours should be reduced to eight hours per day, seven days per week, beginning on January 8, 2021. Ibid.

Petitioner's mother, K.L., appealed the determination, and following the Stage 2, internal appeal, which was performed by Dr. Meena LaCorte, who is board certified in pediatrics and neonatology, United upheld its initial determination that Petitioner's PDN hours should be reduced. R-6. Dr. LaCorte determined that Petitioner does not meet the criteria for the PDN hours requested, and found that he does not require skilled care, with the exception of the GT feedings. R-5. Dr. LaCorte found that Petitioner's needs can be met with PDN services for eight hours per day. Ibid.

Following the results of the internal appeal, K.L. requested that a Stage 3, external appeal be performed by an independent utilization review organization (IURO). The IURO appeal was conducted by a specialist in current practice who is board certified in pediatric gastroenterology. R-7. The reviewer determined that Petitioner's chronic medical conditions have been stable, and identified Petitioner's two main issues as his potential for seizures requiring urgent intervention and his aspiration risk. Ibid. The reviewer determined that, as of the date of the review, Petitioner experienced infrequent seizures requiring intervention and that Petitioner is at a mild risk of aspiration. Ibid. The reviewer determined that twelve hours of PDN services per day was not justified in this matter and that eight hours of PDN services per day were sufficient to meet Petitioner's skilled nursing needs.

Petitioner argues that he meets the skilled nursing standards necessary to maintain his PDN services at twelve hours per day, seven days per week. The Administrative Law

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<sup>1</sup> United specifically noted that Petitioner receives food through a tube that goes into the stomach easily. R-5. United further noted that Petitioner gets four bolus feeds during the day and also takes food by mouth. Ibid. It further noted that Petitioner does not use any oxygen and has no breathing therapies. Ibid.

Judge (ALJ) upheld United's reduction of Petitioner's PDN hours. Based upon my review of the record and the applicable regulations, I hereby ADOPT the Initial Decision.

The regulations state that the purpose of PDN services is to provide "individual and continuous nursing care, as different from part-time intermittent care, to beneficiaries who exhibit a severity of illnesses that require complex skilled nursing interventions on a continuous ongoing basis." N.J.A.C. 10:60-5.1(b). Further, N.J.A.C. 10:60-5.4(b) sets forth the criteria to be met in order to receive PDN services:

**(b)** Medical necessity for EPSDT/PDN services shall be based upon, but may not be limited to, the following criteria in (b)1 or 2 below:

1. A requirement for all of the following medical interventions:

- i. Dependence on mechanical ventilation;
- ii. The presence of an active tracheostomy; and
- iii. The need for deep suctioning; or

2. A requirement for any of the following medical interventions:

- i. The need for around-the-clock nebulizer treatments, with chest physiotherapy;
- ii. Gastrostomy feeding when complicated by frequent regurgitation and/or aspiration; or
- iii. A seizure disorder manifested by frequent prolonged seizures, requiring emergency administration of anti-convulsants.

Additionally, the regulation goes on to exclude certain criteria that do not rise to the level of PDN services unless the criteria above is met:

**(d)** Services that shall not, in and of themselves, constitute a need for PDN services, in the absence of the skilled nursing interventions listed in (b) above, shall include, but shall not be limited to:

1. Patient observation, monitoring, recording or assessment;
2. Occasional suctioning;
3. Gastrostomy feedings, unless complicated as described in (b)1 above; and
4. Seizure disorders controlled with medication and/or seizure disorders manifested by frequent minor seizures not occurring in clusters or associated with status epilepticus.

N.J.A.C. 10:60-5.4(d).

Petitioner's medical records do not demonstrate that he meets the level of care to

support twelve hours of skilled nursing care per day. While United determined that skilled hours were required for GT feedings, as a result of his risk for aspiration, nothing in the record supports skilled hours beyond that need. He is not on a ventilator nor does he have an active tracheostomy. He does not require deep suctioning nor does he need around-the-clock nebulizer treatments and chest physiotherapy. While Petitioner does have a seizure disorder, his last documented seizure prior to the reassessment was on February 25, 2020. While Petitioner believes that additional PDN hours are necessary to solely monitor Petitioner for seizures, PDN services cannot be used purely for observation, monitoring, or assessment in the absence of a qualifying medical need. See N.J.A.C 10:60-5.4(d)1.

Thus, for the reasons stated above, I FIND that Petitioner was properly reassessed, and Petitioner's reassessment and the supporting clinical records fail to demonstrate that Petitioner meets the criteria for medical necessity to support twelve hours per day of PDN services. As such, the reduction of PDN services to eight hours per day, seven days per week was appropriate under N.J.A.C. 10:60-5.4.

THEREFORE, it is on this 22nd day of DECEMBER 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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