



PHILIP D. MURPHY
Governor

State of New Jersey
DEPARTMENT OF HUMAN SERVICES

SARAH ADELMAN
Commissioner

TAHESHA L. WAY
Lt. Governor

Division of Medical Assistance and Health Services
P.O. Box 712
Trenton, NJ 08625-0712

JENNIFER LANGER JACOBS
Assistant Commissioner

**STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES**

M.S.M.,

PETITIONER,

ADMINISTRATIVE ACTION

v.

FINAL AGENCY DECISION

DIVISION OF MEDICAL ASSISTANCE :

OAL DKT. NO. HMA 01341-23

AND HEALTH SERVICES AND :

UNITED HEALTHCARE, :

RESPONDENTS. :

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the OAL case file, the documents in evidence and the Initial Decision in this matter. As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the Office of Administrative Law (OAL) case file, and the documents filed below. Petitioner filed exceptions in the Initial Decision. Procedurally, the time period for the Agency Head

to render a Final Agency Decision is March 11, 2024 in accordance with an Order of Extension.

The matter concerns United Healthcare's (United) November 21, 2022 denial of a request for an increase in Petitioner's private duty nursing (PDN) hours. Petitioner previously received PDN services sixteen hours per day, seven days per week. In 2022, United reduced Petitioner's PDN services to sixteen hours per day Monday to Friday, and eight hours per night on Saturday and Sunday. (J-1). Petitioner appealed United's reduction of PDN hours. (R-13). In the Final Decision dated September 13, 2022, the DMAHS adopted the Initial Decision upholding United Healthcare's reduction of PDN hours. The Final Decision found that the reduction of PDN services was appropriate under N.J.A.C. 10:60-5.4. Id. Thereafter, in November 2022, Petitioner's mother again requested an increase in PDN hours to sixteen hours per day from 6a.m.-10 p.m., seven days per week, or an additional 8 hours of PDN hours on weekends, which Respondent denied on November 21, 2022. (R1-5, at 1). The denial was upheld by internal and external reviews dated December 23, 2022, and January 20, 2023. (R1-3; R1-4). Petitioner's internal and external appeals were denied as not medically necessary, and because Petitioner's family is available to assist him. (R1-4, R1-3). Thereafter, a subsequent reassessment was performed in June 2023 again approving 16 hours per day Monday through Friday and 8 hours per night on weekends. (R3-3).

After concluding internal and external administrative review, this matter was transmitted to the Office of Administrative Law (OAL) on February 14, 2023. The matter was heard remotely on April 17, June 21, June 22, June 26, and June 27, 2023. The record was closed on September 18, 2023, and the OAL issued an Initial Decision on December 11, 2023. The Administrative Law Judge (ALJ) reviewed all of the medical evidence provided during the fair hearing and listened to the testimony of Petitioner's four

fact witnesses and Respondent's expert witness. The ALJ determined that no medical necessity was shown to warrant an increase in PDN hours. The ALJ also determined that Petitioner does not meet either test to justify the transfer of his daily overnight PDN services to daytime hours, along with an additional eight daytime weekend hours. Those hours can be and are now supplied by Petitioner's primary caregivers. PDN services cannot include respite or supervision, or serve as a substitute for routine parenting tasks, N.J.A.C. 10:60-5.4(f), and Petitioner has not proved any work-related or sibling care responsibilities which might preclude his mother performing her primary caregiver responsibilities during the hours in question. Based upon my review of the record, I hereby ADOPT the Initial Decision affirming United's decision not to increase Petitioner's PDN hours.

Private duty nursing services are defined as "individual and continuous nursing care, as different from part-time or intermittent care, provided by licensed nurses in the home. . ." N.J.A.C. 10:60-1.2. To be considered in need of EPSDT/PDN services, "an individual must exhibit a severity of illness that requires complex intervention by licensed nursing personnel." 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).

The regulation addressing the limitation and duration of PDN services states that the determination of the total EPSDT/PDN hours approved shall take into account the primary caretaker's ability to care, as well as alternative sources of PDN care available to the caregiver, such as medical daycare or a school program. N.J.A.C. 10:60-5.4.

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).

Petitioner is a seven-year-old who has a rare neurogenesis disorder – TBCK syndrome. Petitioner is eligible for PDN services pursuant to the federally mandated Early Periodic Screening Diagnosis and Treatment (EPSDT).

Petitioner resides at home with his mother and his twenty-one-year-old sister. Petitioner's twenty-five-year-old sister previously served as his Personal Preference Program (PPP) provider for forty-two hours per month until she resigned on May 14, 2023. Both sisters help Petitioner's mother with his breathing treatment, feeding, and nebulizer treatment during the day. Petitioner's mother has been unemployed since 2021 and is Petitioner's primary caretaker. Petitioner's mother has been trained in the care of Petitioner. (R1-7 at 1). Additionally, Petitioner attends school five days per week with PDN services, all year long. The intention of PDN services is to support-not to replace-the skilled care provided to Petitioner by family members or school programs. Petitioner's mother is his primary caregiver and is available to be Petitioner's primary caregiver. Petitioner's sisters also help their mother to take care of Petitioner.

I agree with ALJ finding that Petitioner's medical records show that Petitioner is not on mechanical ventilation, he does not have a feeding tube, and he does not have a tracheostomy, and does not need deep suctioning. Petitioner's doctors agree that Petitioner has not had a seizure since 2018 and has not been hospitalized for any seizures. Petitioner's seizure disorders are controlled with medication administered by the nurse while Petitioner is at school and at home by Petitioner's mother.

Petitioner argues in their exceptions that the Initial Decision was flawed. Petitioner asserts that Petitioner's mother does not know how to auscultate and she does not know what to listen for when listening through a stethoscope. Petitioner further asserts that Petitioner's 21-year-old sister is available only three days a week to provide any help. Petitioner also states in exceptions that after the hearing, Petitioner had several ER visits and hospitalization for respiratory issues and seizure disorders and was granted sixteen hours of PDN per day from 6 a.m. to 10 p.m. seven days per week.¹ However, based on the Division's review of the record, including the Initial Decision and the medical assessments and record admitted into evidence in this matter, we find that nothing raised in Petitioner's exceptions would have materially affected the clinical necessity determination at issue in this matter or the outcome of the Initial Decision.

The child's care needs determine the amount of PDN services and when the hours permitted can be used. Petitioner has not shown that it is medically necessary for him to have PDN services during the day on the weekends. Petitioner may request a personal care assistant (PCA) assessment should non-skilled personal care services be needed during the period of time that PDN services are not medically necessary.

Thus, for the reasons stated above, I find that Petitioner does not meet the criteria as required N.J.A.C. 10:60-5.4 for increased PDN hours as those hours can be and are now supplied by Petitioner's primary caregivers.

I hereby ADOPT the Initial Decision.

1

The assessment at issue relates to Petitioner's medical needs at the time of the assessment and subsequent hospitalizations may affect Petitioner's future needs for PDN services; however, they do not affect the assessment at issue in this matter.

THEREFORE, it is on this 11th day of March 2024,

ORDERED:

That the Initial Decision is hereby ADOPTED.

Gregory Woods

OBO JLJ

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