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

G.K.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
UNITED HEALTHCARE OF N.J.,

RESPONDENTS.

ADMINISTRATIVE ACTION

ORDER OF REMAND

OAL DKT. NO. HMA 14998-24

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the records in this case, including the OAL case file, the documents in evidence, and the Initial Decision in this matter. Neither party filed exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is June 12, 2025, in accordance with an Order of Extension.

This matter arises from United Healthcare's (UHC) September 23, 2024, rejection of Petitioner's request to continue Private Duty Nursing (PDN) services ten hours per day and seven days per week. Based upon my review of the record, I hereby REMAND the Initial Decision, which adopted UHC's decision to deny Petitioner's request because of UHC's determination that the requested PDN services were not medically necessary.

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). 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).

Patient observation and monitoring alone do not qualify for this type of care. N.J.A.C. 10:60-5.4(d). However, 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-convulsant. N.J.A.C. 10:60-5.4(b)(2).

Here, Petitioner has been diagnosed with kidney transplant and failure to thrive in a child. (R-4.) Petitioner has a gastrostomy tube (G-tube) through which they receive feedings. Ibid. Petitioner is fed through their G-tube overnight. Ibid. Petitioner is mobile and verbal. Ibid. Petitioner now eats and drinks by mouth during the day. Ibid. Petitioner does not have problems with the administration of water through the tube. Ibid. Petitioner received ten hours per day, seven days per week of PDN services and requested to continue these services. Ibid. On September 26, 2024, UHC determined that PDN services are not medically necessary for Petitioner and informed them that their PDN services would be terminated effective October 7, 2024. (R-6.) On October 1, 2024, Petitioner requested an external review, and Maximus Federal Services, Inc. (Maximus) reviewed UHC's determination and upheld it. (R-4.)

Petitioner appealed for this termination of PDN services. ID at 2. A telephone hearing was conducted on January 31, 2025. The record remained open until February 28, 2025, to submit summations. Ibid.

During the hearing, Dr. Terralon Knight, M.D. (Knight) testified on behalf of UHC that Petitioner is appealing the reduction of PDN services from 10 hours per day, seven days per week, to zero hours. ID at 2. Knight explained the difference between skilled and non-skilled needs in caring for a patient like Petitioner. Ibid. Knight testified that Petitioner resides with their parents and three siblings, including their seventeen-year-old brother, who is a kidney transplant recipient and is legally blind. Ibid. Petitioner's mother, E.K., is a nurse and provides care for Petitioner three days per week overnight through Bayada Home Health Care. Ibid. E.K. believes that Petitioner should continue to receive PDN services for gastrointestinal (GI) issues, bad gag reflex, and chronic cough issues.

Ibid. Per Knight, Petitioner does not meet the health plan rules because they no longer require skilled nursing, and it fails to be medically necessary. ID at 3.

E.K., a licensed practical nurse (LPN), testified on behalf of Petitioner that Petitioner has an oral aversion and a significant gag reflex. ID at 4. Petitioner cannot intake complex foods but must have a pure diet. Ibid. Petitioner must have high-caloric foods even though their body mass index (BMI) is so high. Ibid. Petitioner intakes 80 ounces of fluid per day. Ibid. E.K. has to monitor Petitioner for any aspiration, GI upsets, acid reflux, and nausea. Ibid. Petitioner was sent home from school on many occasions for sickness but was nauseous. Ibid. E.K. further testified that it would be impossible for her to care for Petitioner twenty-four hours per day on non-school days as it would be impossible to work or care for her other child. Ibid. E.K. finally testified that in addition to childcare, she has her own needs for sleep, hygiene, and health. Ibid.

The Administrative Law Judge (ALJ) found that there was sufficient testimony from Knight that, based on the clinical records received, Petitioner's condition does not require PDN outside of the school setting because their conditions no longer reach that level of severity. ID at 8. The ALJ also found that Petitioner's special needs do not rise to the level of requiring skilled nursing care outside of school, as evidenced by the record. Ibid. The ALJ finally found that since the medical necessity for PDN services has not been established, based on the evidence in this matter, Petitioner does not require complex, ongoing interventions by a licensed nurse. ID at 9. The ALJ concluded that UHC terminated Petitioner's PDN services appropriately. Ibid.

Based on my review of the record, I believe more information is needed before a final decision on this matter can be reached. The question here is whether Petitioner meets the underlying medical necessity standard for PDN services. Petitioner has complex medical issues. Because of these conditions, Petitioner has received PDN

services from UHC ten hours per day, seven days per week. On September 23, 2024, UHC terminated Petitioner's PDN services based on the medical records. UHC determined that Petitioner's condition has improved. However, per the Initial Decision, Petitioner still has complex medical issues, including a relaxed airway, a horrible gag reflex, an enzyme deficiency and blood sugar issues that cause very frequent hospitalizations because of vomiting and risk for regurgitation and aspiration, and severe acid reflux. E.K. testified that she was concerned about losing Petitioner overnight with an increased risk of ripping out their tube, and high risk of aspiration. Furthermore, E.K. has a special needs son with the same diagnosis. It is clear that N.J.A.C. 10:60-5.4(c) required UHC to take into account any sibling care responsibilities when evaluating the amount of support the primary care provider is able to provide.

Therefore, upon reviewing the record in this matter, I find that the Initial Decision and the OAL file do not have sufficient information to allow me to render a decision. In order to settle the record, I am remanding the matter to OAL for the creation of a more well-developed record on the following issues: 1) UHC should provide additional detail about why UHC believes Petitioner's mother's concerns around aspiration do not rise to the level of requiring PDN, and 2) Petitioner should provide further medical documentation and/or testimony to support their claim of medical necessity, particularly around aspiration, since the OAL file does not include any exhibits from Petitioner.

THEREFORE, it is on this 12th day of June 2025,

ORDERED:

That the Initial Decision is hereby REMANDED for clarification of the record in accordance with this decision.

Gregory Woods

Gregory Woods, Assistant Commissioner
Division of Medical Assistance and Health Services