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DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

J.C.P.,

PETITIONER,

v.

HORIZON NEW JERSEY
HEALTH AND DIVISION OF MEDICAL
ASSISTANCE AND HEALTH
SERVICES,

RESPONDENT.

ADMINISTRATIVE ACTION

ORDER OF REMAND

OAL DKT. No. HMA 03549-2024

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is July 3, 2025, in accordance with an Order of Extension.

This matter arises from Horizon New Jersey Health's (Horizon) decision to reduce Petitioner's Private Duty Nursing (PDN) Services from twelve hours per day Monday through Thursday and eight hours on Friday to eight hours per day, seven days per week. ID at 1. Petitioner filed a request for an internal appeal which was reviewed and upheld on January 12, 2024, denying the request for twelve hours per day seven days per week. R-2. Following the results of the internal review, Petitioner chose to pursue an external appeal through Maximus Federal Services, Inc. (Maximus). On February 21, 2024, Maximus recommended Horizon's reduction of PDN services be upheld. R-5.

Petitioner, an 18-year-old male has severe autism, ADHD, significant oral and possible pharyngeal phase dysphagia, silent aspiration with all consistencies, failure to thrive, constipation, G-tube dependent, eosinophilic esophagitis, aggressive behavior, insomnia, abnormal EEG, left-hand tremor and right-hand contracture. P-1, P-2. Petitioner's physician, Payal A. Makadia, M.D. (Dr. Makadia) notes that Petitioner receives G-tube feedings throughout the day with the last feeding being administered at around 6:45 p.m. P-1. Dr. Makadia also notes that having nursing care twelve hours per day has helped Petitioner with "his failure to thrive" and "vomiting" issues. Ibid. In addition, Dr. Makadia further notes that Petitioner's clinical success is attributed to having nursing care to assist with feedings given his severe autism and behavior of pulling out the tubes. Ibid.

In reviewing the matter for a new authorization, Horizon determined that twelve hours per day, seven days per week, was not medically necessary. R-2. In a letter dated January 12, 2024, Horizon denied Petitioner's request for twelve hours per day, seven days a week as follows:

The request for Private duty nursing (PDN) services 12 hours per day, 7 days per week is denied. Private duty nursing is for members with extensive skilled needs (i.e. prolonged seizures, vent management, complicated tube feeds, etc.) Your child is not on a breathing machine. Your child does not breathe through a hole in the neck (tracheotomy). Your child does not receive oxygen support. Your child does not receive chest physical therapy or suctioning. Your child requires aspiration (breathing in food or drink) precautions. Your child requires custodial care – full hands-on assistance with all basic activities of daily living, urine and bowels elimination, hygiene, and feeding. Custodial care does not require a licensed nurse and can be provided by a trained caregiver. Based on this information, your child has been approved for 8 hours per day, 7 days per week of skilled nursing services. Two weeks at 12 hours/7 days are allowed for caregiver transition. This decision is based on Horizon NJ Health Policy 31C.096 Private Duty Nursing. R-2.

After Horizon's internal review, Petitioner filed an appeal for an external review by an independent utilization review organization (IURO). The IURO reviewer explained that Petitioner has eosinophilic esophagitis, g-tube in place, autism spectrum disorder (ASD), global developmental delay, g-tube feedings 5 times per day but can take pureed foods, 4 medications by g-tube twice a day, 5 medications by g-tube daily, daily rectal suppository and inhaled medication as needed. R-5. The reviewer also explained that Petitioner is noted to be incontinent of bowel and bladder, requires supervision with ADL's and direct assistance, attends school, is non-verbal, can be redirected and is able to walk and stand without assistance. Ibid. The reviewer further explained that Petitioner does not have a tracheostomy, mechanical ventilator, non-invasive ventilation or supplemental oxygen requirement, does not have a seizure requirement and is stable from a cardiorespiratory and neurologic standpoint. Ibid. Lastly, the reviewer notes that Petitioner resides with Y.P, Petitioner's mother who is a trained caregiver. Ibid.

Following the IURO report, Petitioner filed an appeal with the Office of Administrative Law (OAL). After reviewing the evidence, the Administrative Law Judge (ALJ) determined that it is clear that Petitioner meets the criteria for PDN services. ID at 8. The ALJ also determined that the PDN Acuity Tool used reflects a score of 22 based on the services and categories selected for skilled nursing services. Ibid. The ALJ notes that Y.P. confirmed that nurse Schmidt completed the assessment accurately, and that Y.P. "believes that the score should be used in conjunction with the application of clinical judgment and proper consideration of the unique characteristics of an individual patient in order to decide if services or items are reasonable and necessary." Ibid. The ALJ further notes that Petitioner's "score of 22 corresponds" to the "4 to 8 hours per day" category. ID at 9. The ALJ determined that since Petitioner's score falls below the halfway mark between 19 and 27.5, Petitioner could have been allotted 6 hours a day,

but Dr. Keith Keefer authorized the maximum amount of eight hours per day. Ibid. As such, the ALJ concludes that Horizon's reduction of PDN hours from twelve hours to eight hours was appropriate. Ibid. I disagree.

Here, the ALJ places great emphasis on Petitioner's PDN Acuity score to conclude that Horizon's reduction of PDN hours was appropriate in this matter. However, it is important to note that the PDN Acuity Tool used by Horizon appears nowhere in state regulations and is neither mandated nor endorsed by DMAHS. While Horizon is permitted to use such a tool to assist with their assessment of a member's need for services, the fact that a member's score on such a tool is below a given threshold does not in itself demonstrate that the member does not qualify for any specific amount of PDN services. Rather, the MCO must demonstrate that the member does not qualify for twelve daily PDN hours Monday through Thursday, and eight hours daily on Friday with reference to the underlying medical necessity standard, as articulated in state regulations, which are described in greater detail below.

The regulations state that private duty nursing services are defined as "individual and continuous nursing care, as different from part-time intermittent care, provided by licensed nurses in the home . . ." N.J.A.C. 10:60-1.2. To be considered for PDN 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).

Medical necessity for EPSDT/PDN services shall be based upon, but may not be

limited to, the following criteria in (b) or (b)(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.

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

In addition, 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).

In this case, the record needs to be further developed to determine whether the reduction of Petitioner's PDN services is appropriate based on these set of facts. To make

this determination, Horizon will need to clarify what has changed with Petitioner's medical condition to warrant a shift in Petitioner's current schedule wherein twelve daily PDN hours, Monday through Thursday and eight hours on Friday currently in place, and instead authorized eight daily hours, seven days a week of PDN services as the new schedule. The record should also be developed further to directly address the evidence for medical necessity provided by the petitioner, including the letter from the petitioner's physician.

Thus, based on the record before me and for the reasons enumerated above, I hereby REVERSE the Initial Decision and REMAND the matter to OAL to clarify the above-mentioned issue.

THEREFORE, it is on this 30th day of JUNE 2025,

ORDERED:

That the Initial Decision is hereby REVERSED; and REMANDED as set forth herein.

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