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**DEPARTMENT OF HUMAN SERVICES**  
**DIVISION OF MEDICAL ASSISTANCE**  
**AND HEALTH SERVICES**

K.C.,

PETITIONER,

v.

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

RESPONDENT.

**ADMINISTRATIVE ACTION**

**ORDER OF REMAND**

**OAL DKT. No. HMA 00991-2024**

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 June 19, 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 sixteen hours per day, seven days per week to twelve hours per day, seven days per week for two weeks, then to eight hours per day, seven days per week. Petitioner filed a request for an internal appeal which was reviewed and upheld on January 4, 2024, to reduce Petitioner's private duty nursing services. R-5. Thereafter, Petitioner chose to pursue an external appeal through Maximus Federal Services, Inc. (Maximus). On January 11, 2024, Maximus also upheld Horizon's decision to reduce PDN services. R-6.

Petitioner, a 19-year-old male has a principal diagnosis of cerebral palsy, generalized idiopathic epilepsy and epileptic syndromes, not intractable, without status epilepticus, gastrostomy (g) tube, gastroesophageal reflux disease (GERD), dysphagia, and other disorders of psychological development. Ibid. Petitioner had been receiving PDN services sixteen hours per day, seven days per week. Ibid. As required, Petitioner was reassessed for PDN services on December 4, 2023, and a second assessment was performed on October 28, 2024. R-1, R-A. Several areas noted within both PDN acuity tools are as follows: 1) clinical assessment once every 4 hours, 2) communication impaired, 3) chest physiotherapy less often than 4 hours, but at least daily, 4) medication administration less often than every 4 hours, 5) ambulation deficit, 6) nebulizer treatment and management every 4 to 24 hours, 7) mild seizures, 8) enteral nutrition (pump or bolus) administration of feeding, residual check adjustment or replacement of tube, and assessment and management of complication, 9) gastrostomy tube care, 10) activities of daily living (ADL) support needed for more than 4 hours per day to maximize a patient's independence and 11) immobilizer management. Ibid. The only difference between the two assessments was that the October 28, 2024, assessment includes the communication deficit category. R-1. Petitioner's total score for both assessments was 26.5 which provides for 4-8 hours of PDN services. R-1, R-A.

In reviewing the matter for a new authorization, Horizon determined that sixteen hours of PDN services were no longer medically necessary, and that Petitioner's needs could be met with reduced PDN services. R-5. In a letter dated January 4, 2024, Horizon affirmed its decision to reduce Petitioner's PDN services and explained the reason for the denial as follows:

The reason for this action is: The request for 16 hours per day of nursing care for your child was reviewed again. Your child takes food by mouth and through a feeding tube. Your child

was approved for 8 hours/seven days a week. That is enough to provide care for his feeding and other needs. Additional care is custodial care. It can be done by trained caregivers. Thus, this is not approved. Ibid.

Following the results of Horizon's internal review, Petitioner filed an appeal for an external review by an independent utilization review organization (IURO). The IURO reviewer notes the following: 1) Petitioner does not have an oxygen requirement, tracheostomy, mechanical ventilator, or noninvasive ventilator, 2) Petitioner receives nebulizer treatments, chest therapy, oral suctioning and cough assist treatments for airway clearance, but his breathing is stable, 3) Petitioner's last reported seizure was in 2004, and he is not on any anti-seizure medication, 4) Petitioner takes a mechanical soft diet by mouth and receives bolus g-tube feeding, 5) Petitioner has use of his upper extremities, is able to dress himself if his clothes are laid out and can make and consume a peanut butter and jelly sandwich on his own, 6) Petitioner is nonverbal but has a communication device, 7) Petitioner independently uses the toilet for bowel and bladder function, and is alert and oriented and 8) Petitioner resides with a trained personal caregiver and attends school virtually. R-6.

Following the IURO report, Petitioner filed an appeal with the Office of Administrative Law. After review of the evidence, the Administrative Law Judge (ALJ) affirmed Horizon's reduction of PDN services finding that no evidence was presented to show that the "PDN Acuity Tool was performed improperly," thus, it "must be accepted." Ibid. I disagree. Here, the Initial Decision is based solely on Petitioner's PDN Acuity score which independently should not be the determining factor when considering whether there should be a reduction of PDN hours. Rather, when a provider seeks to reduce PDN hours, consideration must be based on the regulatory clinical necessity standard independent of the PDN Acuity Tool be used.

Beyond these specific gaps in the record that must be addressed, the initial decision lacks sufficient analysis to demonstrate that a reduction of PDN services from sixteen hours per day, seven days per week to twelve hours per day, seven days per week for two weeks, then to eight hours per day, seven days per week is appropriate in this matter. 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 sixteen hours, seven days per week of PDN services with reference to the underlying medical necessity standard, as articulated in state regulations, which are described in greater detail below. In this case, the initial decision relies heavily on whether the PDN Acuity Tool was used correctly and fails to consider the regulatory clinical necessity standard independent of Horizon's PDN tool. As such, this review is not based on the totality of circumstances relating to Petitioner's medical condition.

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. First, Horizon should provide clarification regarding the change in Petitioner's current medical condition that would justify such a reduction in PDN services. Second, the ALJ should conduct a review based on the regulatory clinical necessity standard for PDN services independent of Horizon's PDN tool.

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 issues.

THEREFORE, it is on this 17th day of JUNE 2025,

ORDERED:

That the Initial Decision is hereby REVERSED; and REMANDED for specific findings as set forth above.

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