

has a hypertrophic tongue due to his condition, making chewing/swallowing, pronunciation, and speech difficult. ID at 2-3. On January 10, 2025, Horizon notified Petitioner that they were reducing his PDN hours to twelve hours per day effective January 6, 2025 through February 1, 2025. (R-1). No explanation was provided as to why only one month was authorized here, rather than the typical six months of authorization. ID at 18. Since approximately 2012, Petitioner has been receiving PDN services of sixteen hours per day, seven days per week. ID at 4.

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). 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). 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). 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).

Once medical necessity is established, the following criteria impact the extent of authorized PDN hours:

- 1. Available primary care provider support;
 - i. Determining the level of support should take into account any additional work related or sibling care responsibilities, as well as increased physical or mental demands related to the care of the beneficiary;
- 2. Additional adult care support within the household; and
- 3. Alternative sources of nursing care.

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

Registered nurse Valerie Green (Nurse Greene) did an assessment using the Acuity Tool on July 5, 2024. ID at 4. The Acuity Tool completed by Nurse Green rendered a score of 39.5, which equates to 12.1 to 16 hours per day. (R-3).

During the hearing, registered nurse Courtney Heusing (Nurse Heusing) testified that she was assigned to complete an assessment of Petitioner, which occurred on

January 9, 2025. (R-4). Nurse Heusing received clinical records to review which included a letter of necessity from Petitioner's primary care doctor's office (R-8), the "485" form by the ordering physician, which Nurse Heusing explained is the doctor's orders for Petitioner (R-10), the clinical assessment by Bayada, the home care agency that provides the LPNs and RNs for Petitioner's PDN services (R-11), and two prior weeks of nursing notes recorded by the Bayada nurses who rendered care to Petitioner (R-12). ID at 5-6. Both Bayada and the primary care physician's letter of necessity sought an authorization of sixteen hours per day. ID at 7. The "485" form indicates in the orders section that 12-16 hours per day, seven days per week of services should be provided. Ibid. The Acuity Tool completed by Nurse Heusing generated a score of 33, which correlates on the scoring scale to 8.1 to 12 hours per day (R-4). ID at 18. Nurse Heusing testified as to the similarities and differences in the selections on the Acuity Tool she completed compared to the prior Acuity Tool completed by Nurse Green on July 5, 2024. ID at 7. Nurse Heusing asserted that there were "quite a few things" not reflected or captured in the prior Acuity Tool by Nurse Green, which Nurse Heusing did "give credit" for, regarding nebulizer treatment and that Petitioner is totally self-care deficient. ID at 18. There was no explanation given as to how those selections for skilled nursing hours resulted in a lower score compared to Nurse Green's prior Acuity Tool score. Ibid.

During the fair hearing, Petitioner explained that there has been no substantial change or improvement in his condition to reduce the sixteen hours per day of PDN services. ID at 14. He stated that it is not accurate that his condition has improved and argued that he has "gone downhill" in the past year and requires more nursing than in the past. Ibid.

In a very thorough Initial Decision, the ALJ found that since Horizon authorized a reduction of PDN services, it is Horizon's burden to demonstrate by a preponderance of

the evidence why that reduction is appropriate. ID at 22. Horizon relies upon its computer-generated Acuity Tool program to assert that there was a change in Petitioner's status, since the score from the assessment in question placed Petitioner within the eight to twelve hours of care range for PDN services. Ibid. The ALJ states that reliance solely on the Acuity Tool score here has resulted in a sterile method to render an objective determination versus consideration of Petitioner's actual unique status, which is required by the regulations. ID at 23. Once medical necessity has been established for PDN services, the situation criteria must be assessed to determine the amount of PDN services. ID at 24. That situational criterion includes the availability of primary care giver support, additional support in the household, and alternative sources of care available. Ibid. The Initial Decision goes on to say that Petitioner's living alone circumstance is not acknowledged by the Horizon Acuity Tool format and was evidently not considered by the Horizon medical director who made the ultimate determination to reduce Petitioner's long-time authorized sixteen hours per day of PDN care. Ibid.

The ALJ found that there has been no demonstrated change in Petitioner's medical status or ability to perform self-care. ID at 25. There has been no improvement or change in any of his medically needy conditions such as his high aspiration risk, seizure risk, bladder and bowel incontinence, and wound care. Ibid. Petitioner's credible testimony regarding his medical status, deterioration in muscle tone, deterioration of his quality of life and safety status was unchallenged by Horizon. Ibid. While Horizon pointed out the differences between the August 2024 Tool results and the January 2025 Tool results, there has been no explanation as to why the score on the prior Acuity Tool calculated time for skilled nursing differently than the Acuity Tool in question. Ibid.

The ALJ concluded that Petitioner's approved PDN hours of sixteen hours per day, seven days per week, should have continued during the pendency of the Fair Hearing

process and that the reduction of PDN services for the period of January 6, 2025, through February 1, 2025, was not warranted. I agree. The ALJ ordered that Horizon shall immediately reinstate sixteen hours per day of PDN care for Petitioner to provide compensatory time for the loss of care. While relevant regulations and policies do not authorize PDN services to be offered on a "compensatory" basis, Horizon is expected to provide all services that are medically necessary during the pendency of the fair hearing process, something that did not occur in this case, and must be immediately corrected.

Thus, based on the record before me and for the reasons set forth herein, I hereby ADOPT the Initial Decision in this matter and find that the reduction in Petitioner's PDN hours was unwarranted. It appears it has been approximately six months since Petitioner's last assessment, which makes it difficult to determine the amount of services that Petitioner currently requires. Therefore, Petitioner's current status must be reassessed. Note that, per the July 2025 contract between DMAHS and Managed Care Organizations, when a reduction in services has been overturned on appeal, and a subsequent reassessment results in an adverse determination within five years of the previous reduction being overturned, the new adverse determination must refer to the outcome of the preceding overturn, and clearly describe the change in the member's condition or living arrangements since the overturn that would justify the reduction or termination of PDN hours. Because the January 10, 2025 reduction has, through this Final Agency Decision, now been overturned on appeal, this contract provision will be in effect with respect to any future reductions or denials of PDN hours for Petitioner.

THEREFORE, it is on this 11th day of FEBRUARY, 2026,

ORDERED:

That the Initial Decision is hereby ADOPTED and that Petitioner's PDN hours be restored to the level of sixteen hours per day, seven days per week. Horizon shall

reassess Petitioner's current medical condition to determine Petitioners present medical necessity for PDN services, within four weeks of the date of this decision.

Gregory Woods

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