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

N.L.,

PETITIONER,

**ADMINISTRATIVE ACTION**

v.

**FINAL AGENCY DECISION**

DIVISION OF MEDICAL ASSISTANCE :

**OAL DKT. NO. HMA 17579-24**

AND HEALTH SERVICES AND :

HORIZON, :

RESPONDENTS. :

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the Office of Administrative Law (OAL) case file, the documents in evidence, and the Initial Decision in this matter. Exceptions were timely filed by the Petitioner. Procedurally, the time period for the Agency Head to render a Final Agency Decision is January 8, 2026, in accordance with an Order of Extension.

This matter concerns the reduction of Petitioner's private duty nursing (PDN) hours by Horizon. Petitioner had been receiving PDN services for nineteen hours per

day, however, in November 2024 they were reduced to sixteen hours per day. ID at 1. Horizon's decision to reduce the number of PDN services that the Petitioner was receiving was not based on the Petitioner's medical necessity, but a maximum benefit received. Ibid. N.J.A.C. 10:60-5.9 does not allow individuals over twenty-one years old to receive more than sixteen hours per day of PDN services. Petitioner appealed this reduction of PDN hours. ID at 2.

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. Licensed nurses, employed by a licensed agency or healthcare services firm approved by DMAHS, may provide PDN services in the home to beneficiaries receiving managed long-term support services (MLTSS). N.J.A.C. 10:60-1.2, N.J.A.C. 10:60-5.1 (a),(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). PDN services shall be limited to a maximum of sixteen hours, including services provided or paid for by other sources, in a twenty-four-hour period per person in MLTSS. There shall be a live-in primary adult caregiver who accepts twenty four-hour per day responsibility for the health and welfare of the beneficiary unless the sole purpose of the private duty nursing is the administration of IV therapy. N.J.A.C. 10:60-5.9(c).

In emergency circumstances, for example, when the sole caregiver has been hospitalized or for brief post-hospital periods while the caregiver adjusts to the new responsibilities of caring for the discharged beneficiary, the MCO or DMAHS may authorize, for a limited time, additional hours beyond the sixteen-hour limit. N.J.A.C. 10:60-5.9(c)(3).

In this case, Petitioner was twenty-two years old at the time of the Fair Hearing. On July 5, 2023, he turned twenty-one years old. ID at 4. On October 15, 2024, via letter, Horizon notified the Petitioner that it was reducing his PDN hours from nineteen to sixteen hours daily. Ibid. Horizon's letter explained the basis for the reduction but acknowledged a continuing need for PDN services:

The request for Private duty nursing (PDN) services 19 hours per day, 7 days a week is denied. Private duty nursing is for members with extensive skilled needs (i.e. prolonged seizures, vent management, complicated tube feeds, etc.). You do not require the help of a breathing machine (ventilator). You do not breathe through a hole in your neck (tracheostomy). You do not require monitoring for seizures. You require chest physical therapy and suctioning. You require oxygen support. You receive medications and feeds through a stomach tube (G-tube). You require aspiration (breathing in food or drink) precautions. You require custodial care - hands-on assistance with all activities of daily living and feeding. Custodial care does not require a licensed nurse and can be provided by a trained care giver. Your health plan benefit allows for up to 16 hours per day of private duty nursing services for adult members aged 21 and over. This is in accordance with N.J.A.C. 10:60-5.9 C which indicates that a live-in primary adult caregiver who accepts 24-hour responsibility for the health and welfare of the beneficiary and is required to provide a minimum of eight (8) hours of hands-on care daily. Based on this information, you have been approved for 16 hours per day, 7 days per week of private duty nursing services. Two weeks at 19 hours [for] 7 days are allowed for caregiver transition.

#### Exhibit A

The Parties agreed that the material facts were not in dispute as to that PDN decision. ID at 3. Horizon and the Petitioner presented a joint stipulation of facts and exhibits, which addressed the facts leading to PDN reduction. Ibid. Both Parties filed motions for summary decision on July 25, 2025. The record closed on August 29, 2025. Ibid.

The Petitioner has diagnoses of anoxic brain injury, hyperosmolality, hypernatremia, anoxic brain damage, gastroesophageal reflux disease, asthma, myositis ossificans progressive right, supraventricular tachycardia, and psychomotor deficit. Id. at

5. The Petitioner relies on a gastrostomy (g-tube) for all medication and nutritional needs. Ibid. The Petitioner provided a certification that outlined their medical conditions and the skilled care they require. Ibid. This certification does not mention any emergency or recent hospitalization of the Petitioner or his guardians. Id. at 6. Additionally, the Petitioner does not require the administration of IV therapies. Ibid.

The Parties stipulated that the decision to reduce hours to sixteen was not based on a clinical assessment, but on the regulatory PDN hour limitation. Ibid. In the Initial Decision the Administrative Law Judge (ALJ) found that no genuine issue exists as to the material facts, and the only questions presented are whether Horizon's notice was deficient and whether the reduction, as per Horizon's PDN policy and the regulation, violates federal protections that are properly before the OAL. Id. at 7. No genuine dispute of fact exists that the Petitioner is a Medicaid recipient under the MLTSS program who turned twenty-one on July 5, 2023, who presents with complex medical problems requiring skilled nursing care. Ibid. Furthermore, it is undisputed that MLTSS/PDN regulations and Horizon's PDN policy limit the number of PDN hours for adult individuals under the MLTSS program to sixteen hours a day and require a primary adult caregiver to meet the individual's skilled needs for a minimum of eight hours a day. It is also undisputed that Horizon provided a letter to the Petitioner regarding its decision, the basis for that decision, the supporting regulation and policy, how to appeal the determination, and how to file a fair hearing request. Ibid. No dispute exists that Horizon did not supply a copy of the PDN acuity tool with its notification. Ibid. The ALJ found that Horizon's decision to reduce the Petitioner's PDN services from nineteen hours per day to sixteen hours per day has its basis solely in Horizon NJ Health Policy 31C.089.02 and N.J.A.C. 10:60-5.9(c). I agree.

At the Fair Hearing, the Petitioner argued that Horizon violated the Americans with Disabilities Act, 42 U.S.C. §12131, et seq. (ADA) and the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Rehabilitation Act) when it reduced the number of PDN services from nineteen hours to sixteen hours within a twenty-four-hour period. ID at 9. The Petitioner also raised this argument in his filed Exceptions that Horizon's reduction of the Petitioner's PDN hours violates Federal law. Petitioner's Exceptions 1-5. In the Initial Decision the ALJ determined that the OAL does not have jurisdiction to address ADA or Rehabilitation Act claims. Ibid. I agree. Both the ADA and the Rehabilitation Act are federal law, and it has previously been found that State agencies and the OAL do not have jurisdiction to rule on federal-law claims. Hruszko v. New Jersey Dep't of Labor and Workforce Dev., CRT 10136-15, initial decision (Feb. 28, 2017), remanded, Dir. (July 17, 2017) (stating that "neither [the State agency] nor the OAL has jurisdiction to issue any ruling on the federal law claims" when the complaint-amended verified complaint contained ADA and Age Discrimination in Employment Act claims), <https://njlaw.rutgers.edu/collections/oal/>; D.H .. ex rel. minor child. J.R.H. v. Board of Educ. of Montclair, EDU 09956-00, initial decision (March 14, 2002), affd, Comm'r (May 3, 2002), <https://njlaw.rutgers.edu/collections/oal/>.

Furthermore, In N.S., NS., and L.S., v. Americhoice of New Jersey, Inc., (July 26, 2005) OAL Docket No.: HMA 6759-4, 2005 N.J. AGEN LEXIS 496\*, the presiding ALJ concluded that the OAL lacked jurisdiction to address ADA claims. Id. at 29. Rather, ADA cases are federal cases, citing Jones v. Illinois Cent. R.R., 859 F. Supp. 1144 (N.D. Ill. 1994). Under the ADA, public agencies are required to adopt procedures to handle ADA claims. 28 C.F.R. § 35.107. Furthermore, the New Jersey Supreme Court has stated that the filing of a complaint with the appropriate federal agency is probably required before a New Jersey "court" may hear a case that raises ADA claims. Hirsch v. State Bd. of Med.

Exam'rs, 128 N.J. 160 (1992) see also I/M/O Oleksza, 95 N.J.A.R.2d (MVH) 5 N.J.A.C. 10:4.1 (stating "a grievance alleging that the agency has failed to comply with the ADA or has acted in a way that is prohibited by the ADA shall be submitted either in writing or orally to the designated ADA coordinator identified in N.J.A.C. 10:4-3.1").

Therefore, N.S. held that:

The position of the OAL has been that the OAL lacks jurisdiction to hear ADA claims: Additionally, even before the immunity of the states was declared to the extent outlined by the U.S. Supreme Court in Garrity [citation omitted], the [OAL] was without authority to hear appeals brought under the ADA. Neither OAL derivatively, nor the MSB through the Civil Service Act have been granted authority thereunder to hear or adjudicate ADA discrimination claims. 42 U.S.C.A. Secs. 12131 through 12213. Lacking subject-matter jurisdiction through its own enabling legislation, or derivatively from the transmitting agency or from the ADA, an [ALJ] is without jurisdiction to make recommended rulings or decisions. In re Uniform Administrative Rules, 90 N.J. 85, 94 (1982) Wood v. Department of Community Affairs, 243 N.J. Super. 187, 196 (App. Div. 1990). [Naranjo v. Dep't of Corr.], CSV 6152-00, Initial Decision (December 11, 2001), adopted in part, rejected in part, Comm'r. (April 8, 2002).]

Id. at 30.

As such, the OAL does not have authority to rule on claims that a reduction in PDN hours is a form of discrimination under the ADA and the Rehabilitation Act.

At the Fair Hearing, the Petitioner also asserted a due process violation under the Fourteenth Amendment to the United States Constitution because the notice that Horizon provided the Petitioner did not include a copy of the PDN acuity tool used. ID at 14. The ALJ found that the notice provided to the Petitioner explains the basis for Horizon's reduction to sixteen hours of PDN services: its PDN policy and N.J.A.C. 10:60- 5.9(c) that allow a maximum of sixteen hours to the recipient whose live-in adult primary caregiver must provide a minimum of eight hours of care daily. Ibid. The ALJ held that nothing in the regulations requires a copy of the PDN acuity tool to effectuate adequate notice. I agree. Both parties stipulated that the reduction to sixteen PDN hours was based on the

Petitioner turning twenty-one, not based on a clinical assessment utilizing the PDN acuity tool. As such, Horizon's decision was in accordance with N.J.A.C. 10:60-5.9(c) and that reduction did not occur due to the Petitioner's "diagnosis, type of illness, or condition."

In the Initial Decision the ALJ found that Horizon did not commit error by reducing the hours of PDN services that Petitioner would receive from nineteen hours to sixteen hours in a twenty-four hour time period. Id. at 14. I agree. According to N.J.A.C. 10:60-5.9(c), PDN services are limited to sixteen hours per day within a twenty-four-hour period. Additionally, N.J.A.C. 10:60-5.9(c)(2) requires that a primary live-in adult caregiver must meet the beneficiary's skilled needs for at least eight hours every day. In T.M. v. Div. of Med. Assistance & Health Servs, 2019 N.J. Super. Unpub. LEXIS 276 (App. Div.), the New Jersey Appellate Division held that a recipient of PDN services under MLTSS, was subject to the regulatory proscriptions of N.J.A.C. 10:60-5.9(c), which limits PDN services to a maximum of sixteen hours daily, and requires the primary caregiver to provide a minimum of eight hours of care daily.

The ALJ concluded that Horizon's November 2024 reduction from nineteen hours to sixteen hours per day based on the sixteen-hours-daily maximum was appropriate and ordered that Horizon was entitled to summary decision as a matter of law. ID at 14. I concur with the findings of the Initial Decision. The Petitioner is subject to the regulatory proscriptions of N.J.A.C. 10:60-5.9(c), which limits PDN services to a maximum of sixteen hours daily and requires the primary caregiver to provide eight hours of care daily. Combined, the regulation ensures a total of twenty-four hours of daily care. Furthermore, the Petitioner did not allege any emergency circumstances that would authorize, for a limited time, additional hours beyond the 16-hour limit. Thus, for the reasons stated above, I find that Horizon's reduction of PDN hours in November 2024, was appropriate.

THEREFORE, it is on this 7th day of January 2026,

ORDERED:

That the Initial Decision is hereby ADOPTED.

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