



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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VALERIE HARR
Director

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

A.B.,
PETITIONER,
v.
UNITED HEALTHCARE,
RESPONDENT.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 15133-14

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence, the contents of the OAL case file and United Healthcare's exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is August 31, 2015, in accordance with N.J.S.A. 52:14B-10 which requires an Agency Head to adopt, reject or modify the Initial Decision within 45 days of the agency's receipt. The Initial Decision was received on July 17, 2015.

Based upon my review of the record, I hereby ADOPT the Initial Decision reversing United Healthcare's determination that Petitioner is not eligible for 112 hours of private duty nursing services. Petitioner appealed United Healthcare's determination

to reduce his private duty nursing hours (PDN) from 112 hours per week to 70 hours per week. For the reasons which follow, I find that a reassessment should be performed.

In order 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).

Petitioner has been receiving 112 hours of Private Duty Nursing services for at least four years. It is the testimony of Petitioner’s mother, physician and nurses that his condition has not changed during that time and that 112 hours of PDN services should continue. Alternatively, United Healthcare’s witness, Ray Gridley, R.N., testified that Petitioner does not meet the requirements for PDN services. However, Gridley’s testimony was not based on first-hand knowledge of Petitioner’s condition, but rather on the reports of other United Healthcare employees who did not testify at the hearing. Furthermore, the United Healthcare employee who performed the in person assessment of Petitioner did not testify at the hearing.

A finding of fact based on hearsay must be supported by competent evidence. N.J.A.C. 1:1-15.5(b), the residuum rule, requires “some legally competent evidence” to exist “to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.” No such evidence was presented in this matter. United Healthcare relied on the testimony of Ray Gridley to support its decision to reduce

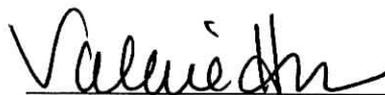
Petitioner's hours. Gridley performs no client assessments himself. He did not perform an assessment of Petitioner. Instead, he relies on the reports of other United Healthcare employees, reviews their narratives and testifies based on those narratives. Here, he relied on reports submitted by United Healthcare employee Lynn Barkley, who also did not perform a personal examination of Petitioner. Instead, Barkley relied on the report of an employee who did conduct an in person assessment, Beth Marts. The assessment was offered without any opportunity to cross examine the individual whose assessment ultimately led to the reduction in hours. Moreover, the veracity of Barkley's notes is called into question when we discover that she was not involved in the case until after United Healthcare made the decision to reduce Petitioner's PDN hours. (I.D. at 5). Unfortunately, her absence at the hearing left the Petitioner and ALJ without an opportunity to question her findings.

Thus, I FIND that United has not presented sufficient legally competent evidence to demonstrate of reduction of PDN services for Petitioner. For this reason, I find that a new assessment is warranted. Should Petitioner disagree with the results of this assessment, he may request another fair hearing at that point.

THEREFORE, it is on this *31<sup>st</sup>* day of AUGUST 2015,

ORDERED:

That United Healthcare shall promptly perform a reassessment. Petitioner's services shall be continued at 112 hours per week pending the reassessment.



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Valerie J. Harr, Director  
Division of Medical Assistance  
and Health Services