

IURO determines whether the Amerigroup determination was correct, and if it was not, the IURO must identify the appropriate services for the member. N.J.A.C. 11:24-8.7(k). The IURO's decision is binding on Amerigroup. N.J.A.C. 11:24-8.7(j). The IURO conducted the review pursuant to DOBI's rules and regulations. See N.J.A.C. 11:24-8.7. The independent review concluded that Amerigroup's denial of coverage for 16 hours per day, seven days per week of Private Duty Nursing services as not medically necessary should be upheld. R-5.

After concluding the internal administrative review, this matter was transferred to the Office of Administrative Law. On August 29, 2023, a fair hearing was held. The record closed on that same day and on September 18, 2023, the OAL issued an Initial Decision. Based upon my review of the record, I hereby REVERSE the Initial Decision reversing Amerigroup's decision to reduce the level of Petitioner's PDN services.

Petitioner is a 4½ year old child who had been receiving private duty nursing services for most of her life. Under the program, children under the age of 21 years old are eligible to receive any medically necessary service, including PDN. Licensed nurses, employed by a licensed agency or healthcare services firm approved by Division of Medical Assistance and Health Services, may provide PDN services in the home to beneficiaries receiving managed long-term support services (MLTSS) and Early and Periodic Screening, Diagnostic, and Treatment services (EPSDT) beneficiaries. N.J.A.C. 10:60-1.2, N.J.A.C. 10:60-5.1(a),(b).

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. 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). “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).

Patient observation and monitoring alone do not qualify for this type of care. N.J.A.C. 10:60-5.4(d). However, the regulations addressing the medical necessity for private duty nursing services state that patient observation, monitoring, recording and assessment may constitute a need for private duty nursing services provided that the beneficiary is ventilator dependent, has an active tracheostomy and needs deep suctioning. N.J.A.C. 10:60-5.4(b)(1). Medical necessity may also be established if the individual needs around-the-clock nebulizer treatments, with chest physiotherapy; gastrostomy feeding when complicated by frequent regurgitation and/or aspiration; or a seizure disorder manifested by frequent prolonged seizures, requiring emergency administration of anti-convulsants. N.J.A.C. 10:60-5.4(b)(2). However, private duty nursing cannot be used purely for monitoring in the absence of a qualifying medical need.

The Administrative Law Judge reviewed all of the medical evidence provided during the fair hearing, listened to the testimony of the nurse who is the case manager for M.A.M., reviewed other medical records including the PDN Acuity Scale documents from February and November 2022, along with the more recent PDN Acuity Scale documents from February and June 2023, and found that the PDN assessment and respondent’s testimony did not rationally assess the child’s condition. ID at 8. Specifically, the ALJ found that new problems of sleep apnea, uncontrolled incontinence, and self-harm noted in the two most recent evaluations, on top of the existing medical issues identified in the two evaluations from 2022, showed that M.A.M.’s condition is getting worse, not better.

Ibid. The ALJ stated that M.A.M.'s need for PDN services is increasing, not decreasing, and therefore the decision to reduce the level of services was inappropriate. The ALJ concluded by stating that although the PDN assessment before the court was the November 2022 assessment, the more important issue before the court was what M.A.M.'s current needs are after the two most recent assessments. Ibid. I concur that M.A.M.'s current needs are important and require immediate attention, but I disagree that her current needs were before the court in this fair hearing.

As the ALJ correctly stated, the PDN assessment before the court was the November 2022 assessment. Therefore, we are required to only consider the information which was available to Amerigroup in November 2022, when they made the decision to reduce the PDN services. It is quite possible for Petitioner's status to have changed between the November 2022 assessment being appealed and the more current 2023 assessments. However, that does not mean that the assessment which is the subject of this appeal was wrong when it was completed. The two 2023 assessments cannot be considered when reviewing the appropriateness of Amerigroup's November 22, 2022, decision.

After excluding the two 2023 PDN assessments, the only other potentially meaningful support for not reducing the level of services from 16 hours per day down to 12 hours per day is the treatment letter dated December 12, 2022, which is referenced in Respondent's Exhibit R-5, the Expedited External Review by Maximus Federal Services (Maximus). The actual letter was never presented by Petitioner. Although M.A.M.'s mother, A.M., was present during the fair hearing, she declined to participate. ID at 3. Petitioner failed to provide any medical documentation or call any witnesses contradicting Respondent's determination. Importantly, although Maximus apparently had a copy of the December 12, 2023, treatment letter written by an unnamed party only identified as

"treatment provider," Maximus' conclusion after their independent physician consultant review found that Amerigroup's determination should be upheld. R-5.

Thus, for the reasons stated above, I FIND that Petitioner was properly reassessed and Petitioner did not provide any supporting clinical records to demonstrate that Petitioner met the criteria for medical necessity to support 16 hours per day of PDN services at the time of the November 2022 assessment. As such, the reduction of PDN services to 12 hours per day, seven days per week was appropriate under N.J.A.C. 10:60-5.4. However, it appears it has now been almost a year since the most recent reassessment was completed, which means there may be a change in the amount of services that Petitioner currently requires. Accordingly, Petitioner's current status must be reassessed.

THEREFORE, it is on this 15th day of DECEMBER 2023,

ORDERED:

That the Initial Decision is hereby REVERSED and Amerigroup shall assess Petitioner's current condition within four weeks of this decision to determine Petitioner's present medical necessity for PDN services.



Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance and Health Services