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**DEPARTMENT OF HUMAN SERVICES**  
 Division of Medical Assistance and Health Services  
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 Assistant Commissioner

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

M.K.,	:	
	:	
PETITIONER,	:	<b>ADMINISTRATIVE ACTION</b>
	:	
v.	:	<b>FINAL AGENCY DECISION</b>
	:	
DIVISION OF MEDICAL ASSISTANCE	:	<b>OAL DKT. NO. HMA 13585-2023</b>
	:	
AND HEALTH SERVICES AND	:	
	:	
HORIZON NEW JERSEY HEALTH	:	
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RESPONDENTS.	:	

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. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is October 24, 2024.

This matter arises from Horizon's September 20, 2023, decision to reduce Petitioner's Private Duty Nursing (PDN) Services from sixteen hours per day, seven days a week to twelve hours per day, seven days a week effective October 2, 2023. (R-3). Petitioner's pursued an internal appeal and Horizon's determination to reduce PDN services was affirmed by MES Peer Review Services by a letter dated October 7, 2023 (R-7). Thereafter, Petitioner pursued an external appeal through Maximus Federal Services, Inc., an organization that contracts with the State of New Jersey Department of Banking and Insurance to provide independent external reviews of adverse benefit determinations. The independent review, which was binding on Horizon, affirmed the denial. (R-5). See N.J.A.C. 11:24-8.7(j).

After concluding the appeal, this matter was transferred to the Office of Administrative Law. On July 8, 2024, a hearing was held and the OAL issued an Initial Decision affirming Horizon's determination to reduce Petitioner's PDN services. For the reasons set forth therein, I concur.

Under the Medicaid/NJ Family Care program children under the age of 21 years old are eligible to receive any medically necessary service, including PDN. 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). 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). 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).

In the present matter, Petitioner is a ten-year-old child with severe neurological impairment due to disseminated tuberculous infection during infancy; cortical blindness; intractable seizures; Lennox Gastaut Syndrome; wheelchair dependency; adrenal insufficiency; gastroesophageal reflux diseases; neuromuscular scoliosis; ineffective airway clearance; ventriculoperitoneal shunt status; obstructive hydrocephalus; status post hip surgery; front lobe cva; and gastronomy tube for feeding. (R-2, page 4). On September 19, 2023, Horizon's Registered Nurse, Kimberly Schmidt, R.N., reviewed Petitioner's needs, a letter of medical necessity from Children's Specialized Hospital, and utilized the PDN Acuity Tool to assess Petitioner's care requirements. Kimberly Schmidt, R.N. determined that the services required for tasks such as seizure management, enteral nutrition, and gastrostomy tube care were consistent with a need for eight to twelve hours of PDN services per day. Specifically, Petitioner no longer required hourly clinical assessments or injectable medications, and some other intensive care needs from the prior 2019 assessment had diminished. (R-6).

Petitioner's mother, S.K., testified that there was an increase in Petitioner's seizure frequency and additional care requirements related to Petitioner's gastrostomy tube feeding and equipment management. S.K. further testified that the level of care needed had increased, including more frequent medication administration, and other medical interventions including diaper changes and bed repositioning. (ID at 5).

However, the ALJ determined that S.K.'s testimony did not provide specific, quantifiable details that would support a need for the previously authorized sixteen hours

of care. The ALJ found that the detailed assessment and review conducted by Horizon, alongside the lack of contradictory evidence validates the decision to reduce PDN services, while still providing a level of care that aligns with Petitioner's current medical needs.

I concur with the decision to uphold Horizon's determination to reduce Petitioner's PDN from sixteen hours per day to twelve hours per day. The reduction is supported by the comprehensive review conducted by Kimberly Schmidt, an experienced registered nurse, who carefully assessed Petitioner's medical needs using the PDN Acuity Tool. Schmidt's detailed evaluation, which included a review of Petitioner's diagnosis, treatment requirements, and recent medical history, indicated a reduction in the necessity for continuous skilled nursing care. The assessment revealed that while Petitioner continued to have substantial medical needs, such as seizure management and gastrostomy tube care, many of the more intensive requirements that previously justified sixteen hours of care per day, such as hourly clinical assessment and frequent medication administration were no longer present.

Moreover, the reduction aligns with the regulatory framework set forth in N.J.A.C. 10:60-5.3(b) and (c), which specifies that PDN services should be based on the current complexity and intensity of care needs. The testimony provided by S.K., while emphasizing the ongoing challenges Petitioner faces, did not provide sufficient evidence to warrant maintaining the previous level of care, specifically in light of the documented improvements on the PDN Acuity Tool. Accordingly, the decision to reduce the PDN services is supported by the evidence and complies with the regulatory requirements. However, it has been a year since the reassessment in question 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 OCTOBER 2024

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