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

W.R.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
HORIZON NEW JERSEY HEALTH,	:	OAL DKT. NO. HMA 13618-23
	:	
RESPONDENT.	:	

As Assistant Commissioner for 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 and the contents of the Office of Administrative Law (OAL) case file. Neither party filed exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is August 8, 2024, in accordance with an Order of Extension.

This matter arises from Horizon New Jersey Health's (Horizon) decision to reduce Petitioner's Private Duty Nursing (PDN) services from twelve hours per day, seven days per week, to eight hours per day, seven days per week. Based upon my review of the record, I hereby ADOPT the very thorough Initial Decision, which affirmed Horizon's decision to reduce Petitioner's PDN hours.

Petitioner is a five-year-old child who is diagnosed with Lennox-Gastaut syndrome, obstructive hydrocephalus, obstructive sleep apnea, congenital laryngomalacia, feeding difficulties, and other interstitial lung diseases of childhood. 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).

PDN 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.

Once medical necessity for PDN services has been established, the following criteria are applied when determining the extent of the need for PDN services and the authorized hours of service:

1. Available primary care provider support
 - a. 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)

Horizon previously authorized PDN services for Petitioner for twelve hours a day, seven days a week, and after a reassessment in October 2023, reduced the number of hours to eight hours a day, seven days a week. ID at 9. Petitioner receives nursing services through the school when Petitioner is in attendance. Ibid.

A PDN Acuity Tool was completed in October 2023 by Kimberly Schmidt, a Registered Nurse. ID at 11. On this assessment, Petitioner scored 23 points, which is the mid-range for receiving four to eight hours of PDN services per day. (R-5). An external appeal through the Department of Banking and Insurance's (DOBI) independent utilization review organization (IURO) process was conducted. N.J.A.C. 11:24-8.7(a). The IURO determines whether the Horizon's 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 Horizon. 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 Horizon's denial of coverage for twelve hours per day, seven days per week of Private Duty Nursing services as not medically necessary should be upheld. R-4.

The Administrative Law Judge (ALJ) found that Petitioner has multiple, significant medical conditions that previously warranted the authorization of PDN services for twelve hours per day, seven days per week beginning in 2019. ID at 15. The Initial Decision discussed the testimony of Petitioner's doctors and specifically states that while Petitioner's treating pediatric neurologist, Dr. Sorgan, expressed concern about Petitioner's seizure activity especially given his impaired cognitive abilities, his treating pediatrician, Dr. Aronsky, characterized Petitioner's condition as "improving" and "definitely not getting worse." Ibid. The ALJ found it important that there was a lack of testimony on Petitioner's behalf as to what other "skilled nursing care" was required. ID at 16. Ultimately, the ALJ concluded that Horizon's decision to reduce Petitioner's PDN services from twelve hours per day, seven days per week, down to eight hours per day, seven days per week, was appropriate. Ibid. I agree.

Thus, for the reasons stated in the Initial Decision and above, I concur with the Initial Decision finding that Petitioner was properly reassessed and Petitioner did not provide any supporting testimony or clinical records to demonstrate that Petitioner met the criteria for medical necessity to support twelve hours per day of PDN services at the time of the October 6, 2023 assessment. As such, the reduction of PDN services to eight hours per day, seven days per week was appropriate under N.J.A.C. 10:60-5.4.

Thus, for the reasons set forth above and those contained in the Initial Decision, I hereby ADOPT the Initial Decision in this matter.

THEREFORE, it is on this 6th day of August 2024,

ORDERED:

That the Initial Decision is hereby ADOPTED.

Gregory Woods

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