



PHILIP D. MURPHY
Governor

State of New Jersey
DEPARTMENT OF HUMAN SERVICES
Division of Medical Assistance and Health Services
P.O. Box 712
Trenton, NJ 08625-0712

SARAH ADELMAN
Commissioner

TAHESHA L. WAY
Lt. Governor

JENNIFER LANGER JACOBS
Assistant Commissioner

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

Z.A.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
UNITEDHEALTHCARE,	:	OAL DKT. NO. HMA 11393-23
	:	
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 May 28, 2024, in accordance with an Order of Extension.

This matter arises from UnitedHealthcare's (UHC) September 20, 2023, rejection of Petitioner's request to be provided Private Duty Nursing (PDN) services twelve hours per weekday and seven hours per weekend day. UHC approved nine hours per weekday and denied the request for the weekend hours. Based upon my review of the record, I hereby ADOPT the Initial Decision which reversed UHC's decision denying the additional

three hours of PDN services during weekdays and seven hours during weekend days and directed UHC to reevaluate Petitioner's eligibility for those services.

Petitioner is a 14-year-old child who is diagnosed with Lennox-Gastaut syndrome, Knobloch syndrome, attention deficit hyperactivity disorder, autism, polymicrogyria, and seizure activity. ID at 2-3. 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)

Dr. Sorrentino, who specializes in newborn intensive care and pediatrics, testified for UHC. ID at 5. Dr. Sorrentino testified that although Petitioner has daily seizures, they are brief, not prolonged or continuous, do not occur in clusters, and do not require recovery medications. Ibid. Dr. Sorrentino also found it relevant that there was no record of emergency room visits for acute seizure activity and there were no recent hospitalizations. Ibid. Dr. Sorrentino testified that Petitioner's family members were able to care for him but that he was not aware that another child in the household also received PDN services for similar medical needs. Ibid.

Petitioner's father, S.A., testified that Petitioner's doctor prescribed VNS, which is a super magnet that is swiped over Z.A.'s pacemaker, to help him breathe. ID at 5-6. If the VNS does not work, Nayzilam medication is sprayed into his nose to stop the seizure. ID at 6. S.A. testified that as a result of some seizures, Petitioner has fallen and hit his face on the ground, knocked out teeth, and he almost lost an eye. Ibid. S.A. testified that in mid-December 2023, he notified the doctor that Petitioner was having cluster seizures daily and around 15 seizures throughout the day at that time, requiring the use of both the VNS and Nayzilam. Ibid. S.A. also testified that they have been directed by the doctor to not rush Petitioner to the emergency room. ID at 7. During the hearing, S.A. produced a January 16, 2024, letter from Dr. Bergqvist which stated that Dr. Bergqvist's team strives to keep Petitioner out of the emergency room to avoid hospital-associated complications and to reduce costs. Ibid. It went on to say that ER staff do not have the expertise to manage Petitioner's day-to-day epilepsy symptoms. Ibid. S.A. explained the situation in their home and stated that since Petitioner's younger brother has almost the same disorders, the children's needs cause the conditions at home to be "total chaos." Ibid.

Lastly, Ms. Hall, R.N., who is the Director of Nursing for the company which provides PDN services for Petitioner, testified that because Petitioner drops when having seizures, Petitioner can, and has, sustained physical injuries. ID at 8. Additionally, due to both children having developmental and behavioral disabilities, they engage in self-harm. Ibid. Ms. Hall testified that it is very challenging for Petitioner's mother to continuously monitor and assess both children. Ibid.

The Administrative Law Judge (ALJ) found that Petitioner is dependent upon a VNS and an anti-convulsion drug to control Petitioner's cluster seizures, which are unrelenting and recurring. ID at 13. The ALJ also found that there was no evidence in the record that UHC considered the impact of Petitioner's brother and his care needs

upon Petitioner's mother's ability to provide care. Ibid. The Initial Decision went on to state that Dr. Sorrentino acknowledged that he was not aware of the other child's medical needs and their impact upon Petitioner's mother's ability to care for Petitioner. Ibid. The regulation requires careful consideration of this information to determine the appropriate number of PDN hours and appropriate services. Ibid. Therefore, the Initial Decision ordered that the decision of UHC denying the three additional hours of PDN services during weekdays and seven hours during weekend days was reversed and that UHC must reevaluate Petitioner's eligibility after conducting a thorough assessment of Petitioner's mother's ability to care for both children. Ibid.

Less than two weeks after the Initial Decision was provided to UHC, counsel for Respondent submitted a letter to the Division of Medical Assistance and Health Services stating that UHC reassessed Petitioner and that Petitioner had been approved for 56 hours of PDN hours (eight hours per day, seven days a week). The letter stated that the assessment considered the Petitioner's primary care provider's ability to care for the Petitioner and Petitioner's brother, in accordance with the Initial Decision.

It is clear that N.J.A.C. 10:60-5.4(c) required UHC to take into account any sibling care responsibilities when evaluating the amount of support the primary care provider is able to provide. Dr. Sorrentino testified that he was not aware Petitioner had a sibling with similar medical needs and the impact it had upon the primary care provider's ability to care for Petitioner. Therefore, UHC failed to properly evaluate Petitioner's request to be provided Private Duty Nursing services twelve hours per weekday and seven hours per weekend day.

Accordingly, for the reasons set forth above and those contained in the Initial Decision, I hereby ADOPT the Initial Decision and FIND that reversing UHC's decision to deny the requested hours and ordering UHC to reevaluate Petitioner's eligibility for the

requested hours was appropriate. As it appears UHC has already reassessed Petitioner in accordance with the Initial Decision, UHC shall formally inform Petitioner of UHC's decision to approve 56 hours of PDN services per week so that Petitioner is afforded their appeal rights.

THEREFORE, it is on this 24th day of MAY 2024,

ORDERED:

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

Gregory Woods

OBO JLJ

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