



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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Governor

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KIM GUADAGNO
Lt. Governor

MEGHAN DAVEY
Director

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

J.C.,

PETITIONER,

v.

HORIZON NJ HEALTH,

RESPONDENT.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 04995-16

As Director of the Division of Medical Assistance and Health Services (DMAHS), 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 case file. No exceptions to the Initial Decision were filed. Procedurally, the time period for the agency to render a Final Agency Decision in this matter is January 5, 2017 pursuant to an Order of Extension.

Based upon my review of the record, I hereby adopt the conclusions and recommended decision of the Administrative Law Judge in their entirety and I

incorporate the same herein by reference. In order to qualify for private duty nursing services, DMAHS' regulations require that:

1. There is a capable adult primary caregiver residing with the individual who accepts ongoing 24-hour responsibility for the health and welfare of the beneficiary;
2. The primary caregiver agrees to provide **a minimum of eight hours of hands-on care** to the individual in any 24-hour period (emphasis added); and
3. The home environment can accommodate the required equipment and licensed PDN personnel. [N.J.A.C.10:60-5.3(c)].

In this case, the primary caregiver, Petitioner's wife, has accepted daily responsibility for her husband, including a minimum of eight hours per day of hands-on care. As to the number of hours which can be approved, N.J.A.C. 10:60-5.4(a) provides in part:

1. The Division shall determine and approve the total PDN hours for reimbursement, in accordance with N.J.A.C. 10:60-5.2(b). **A maximum of 16 hours of private duty nursing services may be provided in any 24-hour period** (emphasis added).
2. The determination of the total EPSDT/PDN hours approved, up to the maximum of 16 hours per 24-hour period, shall take into account alternative sources of care available to the care-giver such as medical day care.
3. **In emergency situations**, for example, when the sole caregiver has been hospitalized, **the Division may authorize, for a limited time, additional hours beyond the 16-hour limit** (emphasis added).

Thus, without a temporary emergency situation, the regulations preclude the provision of private duty nursing services in excess of 16-hours per day. N.J.A.C. 10:60-5.3(c) and N.J.A.C. 10:60-5.4(a). See also N.J.A.C. 10:49-22.6(b). In this case, the ALJ returned the case to Horizon NJ Health to give Petitioner's wife the opportunity to provide evidence of her physical inability to temporarily provide the requisite 8-hours of hands-on care.

THEREFORE, it is on this ~~21st~~ day of December 2016,

ORDERED:

That the recommended decision affirming the 16-hour per day maximum of private duty nursing services is hereby adopted as the Final Decision in this matter, and

IT IS FURTHER ORDERED:

That Horizon NJ Health determine if an emergency situation exists temporarily warranting the provision of private duty nursing services in excess of the 16-hour per day maximum, and

IT IS FURTHER ORDERED:

That Horizon NJ Health determine the availability and appropriateness of other care options.


Meghan Davey, Director
Division of Medical Assistance
and Health Services