

Petitioner does have several medical conditions including muscular dystrophy, dysphagia, scoliosis and asthma. She is fed through a G-tube. ID at 2. While these conditions may require assistance, the medical records in evidence do not support that Petitioner's need for assistance rises to the level of skilled nursing services.

The purpose of private duty nursing services is to provide "individual and continuous nursing care", as opposed to "part-time intermittent care". N.J.A.C. 10:60-5.1(b). In order to be considered for private duty nursing services an individual must "exhibit a severity of illness that requires complex skilled nursing interventions on an ongoing basis". 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).

Moreover, 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).

Petitioner's medical records concerning her PDN services do not demonstrate the need for skilled nursing. She is not ventilator dependent, does not have an active tracheostomy or a seizure disorder. Petitioner's use of a nebulizer is occasional or periodic. ID at 2. There is no indication that Petitioner's nebulizer treatments are around the clock so as to warrant PDN services. The testimony from Petitioner's mother about

being notified that Petitioner had aspirated during a feeding is not supported by medical records nor are there timeframes associated with these instances. Rather the documents in evidence show that feedings were "well tolerated." R-4.

I agree with United Healthcare's explanation of the testimony from Elizabeth Kelly, R.N., who performed the assessment. Petitioner is in continuous need of observation, supervision and monitoring. However, the regulations clearly state that PDN services are not available for observation, monitoring or assessment. The medical records show the PDN care being provided consists of only monitoring and observing Petitioner's medical conditions which is not skilled care.

Additionally, the difficulties with Petitioner's parental support cannot be a basis for providing the PDN services. Her mother's work schedule is only relevant when the PDN services have been found medically necessary. N.J.A.C. 10:60-5.4(b) and 10:60-5.4(c)(1).

However, I am concerned that no new assessments were included in the record. The assessment that reduced the PDN services was done nearly a year ago. While Petitioner did not demonstrate any change since that assessment, United Healthcare should perform a new assessment for PDN services as well as assess for other services such as Personal Care Assistance should PDN services no longer be medically necessary.

THEREFORE, it is on this ^{16th} day of AUGUST 2018,

ORDERED:

That the Initial Decision is hereby MODIFIED as set forth above; and

That United Healthcare shall continue PDN services until Petitioner's next assessment at which time Petitioner will have the right to appeal the up-to-date assessment.


Meghan Davey, Director
Division of Medical Assistance
and Health Services