

comprehensive services and supports, including private duty nursing, to help eligible beneficiaries remain living in the community rather than in a nursing facility. In order for an applicant to qualify for MLTSS, he or she must be in need of nursing facility level of care. Eligibility for nursing facility services is determined by the professional staff designated by the Department based on a comprehensive needs assessment that demonstrates that the beneficiary requires nursing home level of care. N.J.A.C. 8:85-2.1. In January 2018, Petitioner was assessed for MLTSS. That assessment determined that Petitioner was not clinically eligible for MLTSS. Petitioner appeals that determination.

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 is not ventilator dependent, does not have an active tracheostomy, and does not receive nebulizer treatments or gastrostomy feeding. Petitioner has a seizure disorder that required him to be hospitalized three times in three years for seizures that lasted a few seconds to a minute. Petitioner has not suffered a seizure in the eight months preceding the Office of Administrative Law (OAL) hearing. Furthermore, Petitioner's seizures are not frequent or prolonged requiring emergency administration of anticonvulsant medication. Instead, Petitioner's seizures are now controlled by medication administered by his parents. While Petitioner's 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.

Thus, I FIND that the record does not support the finding that Petitioner met the nursing facility level of care required to establish clinical eligibility for the MLTSS program.

THEREFORE, it is on this ^{22nd} day of AUGUST 2018,

ORDERED:

That the Initial Decision is hereby ADOPTED.



Meghan Davey, Director
Division of Medical Assistance
and Health Services