

State of New Jersey Department of Human Services Division of Medical Assistance and Health Services

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PHILIP D. MURPHY Governor

> Sheila Y. Oliver Lt. Governor

Carole Johnson Commissioner

Meghan Davey Director

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

M.S.,

PETITIONER,

ADMINISTRATIVE ACTION

V.

FINAL AGENCY DECISION

DIVISION OF MEDICAL ASSISTANCE:

OAL DKT. NO. HMA 10242-17

AND HEALTH SERVICES AND

UNITED HEALTHCARE,

RESPONDENTS.

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision and the documents in evidence. Neither party filed exceptions. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is April 5, 2018 in accordance with an Order of Extension. The Initial Decision in this matter was received on January 3, 2018.

Based upon my review of the record, I hereby ADOPT the Initial Decision affirming United Healthcare's determination that Petitioner is not eligible for private duty

nursing services. 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). 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).

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 anticonvulsants. N.J.A.C. 10:60-5.4(b)(2).

Petitioner suffers from a number of chronic medical conditions. Petitioner's treating physician cited a need for private duty nursing to continue in order to prevent further medical complications. See P-1. However, private duty nursing cannot be used purely for monitoring in the absence of a qualifying medical need. Although N.J.A.C. 10:60-5.4(b)2.ii provides that medical necessity may also be established if the individual needs gastrostomy feeding "when complicated by frequent regurgitation and/or aspiration", no medical evidence was presented to establish that Petitioner's feedings are complicated by frequent regurgitation or aspiration. Because Petitioner does not

require complex, ongoing interventions by a licensed nurse, she does not meet the eligibility requirements for private duty nursing.

THEREFORE, it is on this 4th day of APRIL 2018,

ORDERED:

That the Initial Decision affirming the denial of private duty nursing is hereby ADOPTED.

Meghan Davey, Director

Division of Medical Assistance

and Health Services