

old. She suffers from breathing difficulties and vomiting. Food and medicine are administered through a feeding tube and she uses a nebulizer every four hours.

Under the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) program, children under the age of 21 are eligible to receive any medically necessary service. 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).

I agree with the ALJ's determination that Petitioner meets the medical necessity criteria under N.J.A.C. 10:60-5.4(b). In fact, Amerigroup found that Petitioner met the medical necessity requirements. What is in question, however, is the amount of PDN hours required by Petitioner. Amerigroup's determination that Petitioner should receive only four hours of care is based on the fact that at least three categories on the PDN Acuity Scale do not apply to children who are less than least twelve months old. It does not take into account Petitioner's age or condition.

Based upon my review of the record, I hereby MODIFY the Initial Decision affirming the provision of 16 hours of PDN services per day. I FIND that an assessment is needed in order to determine the amount of medically necessary PDN services that Petitioner requires on a daily basis.

THEREFORE, it is on this  day of OCTOBER 2019,

ORDERED:

That this matter is returned to Amerigroup to perform a reassessment and Petitioner's allotted PDN hours shall remain at 16 hours per day pending the outcome of the new assessment.



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