



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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CAROLE JOHNSON
Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

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

A.M. ON BEHALF OF M.A.	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
AMERIGROUP	:	OAL DKT. NO. HMA 00991-19
	:	
RESPONDENTS.	:	

As Assistant Commissioner of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is October 24, 2019 in accordance with an Order of Extension. The Initial Decision in this matter was received on July 25, 2019.

This matter concerns Amerigroup's denial of Petitioner's request for sixteen hours per day of Private Duty Nursing (PDN) services and award of four hours of daily PDN services. Petitioner is an infant who was born preterm with several medical issues. She was hospitalized for four months after birth and weighed only eight pounds at nine months

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