



State of New Jersey

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

F.I.,

PETITIONER,

v.

UNITED HEALTHCARE,

RESPONDENT.

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ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. No. HMA 03360-2021

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is August 19, 2022, in accordance with an Order of Extension.

This matter concerns the reduction of Petitioner's private duty nursing (PDN) hours by United Healthcare (United). Petitioner had been receiving PDN services for sixteen hours per day, seven days a week. In December 2020, United reassessed Petitioner's condition for PDN services. Based upon that assessment, United determined that these hours were no longer medically necessary, and Petitioner's PDN services were reduced to fourteen

hours per day, seven days per week.

At the time of the assessment, Petitioner was four-years-old with a primary diagnosis of Rhett's syndrome, which manifests itself through temperature dysregulation and loss of coordination, speech, and use of the hands. Petitioner also suffers from a seizure disorder, and she is on seizure and aspiration precautions. Petitioner's last seizure prior to the assessment was on December 5, 2020. Petitioner does receive gastrostomy feedings three times per day and receives continuous gastrostomy feeds overnight. R-9. Petitioner's mother provides some food by mouth for pleasure. Petitioner began receiving PDN services of at least sixteen hours per day, seven days per week from Preferred Home Health Care & Nursing Services, Inc. (Preferred) beginning on or about September 26, 2019. Ibid. Petitioner has been receiving two eight hour shifts of PDN services between 7-8am to 3-4pm and 11pm to 7am. Ibid.

Petitioner's Plan of Care (POC), prepared by Preferred for the certification period of November 29, 2020 through January 28, 2021, provides that Petitioner's functional limitations are bowel/bladder incontinence, endurances, ambulation, speech, all activities of daily living (ADL), developmental delay, non-verbal, nothing by mouth (NPO), and respiratory. R-2. The POC additionally provides that Petitioner receives gastrostomy feedings three times daily and if Petitioner was unable to receive full volume day time bolus feedings, the amount of formula not consumed should be added to the nocturnal tube feeding. Ibid. The POC notes that "[r]ate may be indicated per parent discretion and patient tolerance; SN will observe patient for intolerance of overnight feedings." Ibid.

The PDN recertification form, also prepared Preferred and dated December 17, 2020, identifies oxygen, chest physical therapy (as needed), tube feed, and seizure precautions as Petitioner's skilled nursing needs. R-1. Her unskilled needs were identified as bladder and bowel incontinence, mobility limitations, and communication deficit due to Petitioner being

nonverbal. ibid.

Nursing notes reviewed by United show that Petitioner's care during these shifts included vitals being checked two to three times per shift, medication administration with flushes, gastrostomy feeds, cough assist treatments, bathing, bracing, proper positioning, and diaper changes. R-4. Her typical seizures last approximately ten seconds and longer seizures last approximately one minute. ibid. The notes do not show any recent hospitalizations, Emergency Department visits, or urgent nursing interventions. While some of the notes state that "feed was not tolerated," most of the feedings were noted as tolerated. ibid.

In reviewing the matter for a new authorization, United determined that sixteen hours of PDN services per day, seven days per week, were not medically necessary. United advised that

[y]our child gets food through a tube. The food goes into the stomach. Your child gets three (3) bolus feeds through the tube during the daytime. Your child gets one feed at night. This feed runs for 1 2/3 hours. Your child has approximately one (1) seizure each week. Your child gets cough assist therapy one (1) time each nursing shift. Your child does not use oxygen. Your child does not use any other therapies on a regular basis."

R-5. Based on this assessment, United determined that Petitioner's PDN hours should be reduced to fourteen hours per day, seven days per week, beginning on January 9, 2021.

ibid.

Petitioner's mother, K.I., appealed the determination, and following an internal appeal, which was performed by United Medical Director, Dr. Amy Aronsky, DO, who is board certified in pediatrics, United upheld its initial determination that Petitioner's PDN hours should be reduced. R-8. Dr. Aronsky determined that while Petitioner needs skilled nursing care, she does not meet the criteria for the PDN hours requested. R-5. Dr. Aronsky found that Petitioner's needs can be met with PDN services of fourteen hours per day. ibid.

Following the results of the internal appeal, K.I. requested that an external appeal be performed by an independent utilization review organization (IURO). The IURO appeal was conducted by a specialist in current practice who is board certified in pediatric gastroenterology. R-9. The reviewer determined that Petitioner's chronic medical conditions have shown signs of stability over time and stated that Petitioner's medical nursing notes and plan of care show that her care consists mostly of monitoring her overall condition that has been stable for months, administration of infrequent medications, gastrostomy feedings (with some less tolerated during the evenings, gastrostomy venting, monitoring for seizure activity, and proper positioning. Ibid. Petitioner's two main issues—her potential for seizures requiring urgent intervention and aspiration risk—were noted to have been manageable without recent urgent intervention. Ibid. The IURO found that “[t]he potential for occasional prolonged seizure while ill is insufficient to merit 16 hours of private duty nursing.” Ibid. The reviewer ultimately determined that Petitioner's “medical condition and care needs do not meet standards for medically necessity for 16 hours of private duty nursing. Her infrequent acute illnesses, oral [gastrostomy] feeding and infrequent prolonged seizures requiring intervention can be managed with a 2-hour per day reduction of private duty nursing services safely and effectively.” Ibid.

Petitioner argues that she meets the skilled nursing standards necessary to maintain her PDN services at sixteen hours per day, seven days per week. The Administrative Law Judge (ALJ) reversed United's reduction of Petitioner's PDN hours. Based upon my review of the record and the applicable regulations, I hereby REVERSE the Initial Decision and uphold United's reduction of Petitioner's PDN services from sixteen hours per day, seven days per week to fourteen hours per day, seven days per week.

The regulations state that the purpose of PDN services is to provide “individual and continuous nursing care, as different from part-time intermittent care, to beneficiaries who exhibit a severity of illnesses that require complex skilled nursing interventions on a

continuous ongoing basis.” N.J.A.C. 10:60-5.1(b). Further, N.J.A.C. 10:60-5.4(b) sets forth the criteria to be met in order to receive PDN services:

(b) Medical necessity for EPSDT/PDN services shall be based upon, but may not be limited to, the following criteria in (b)1 or 2 below:

1. A requirement for all of the following medical interventions:

- i. Dependence on mechanical ventilation;
- ii. The presence of an active tracheostomy; and
- iii. The need for deep suctioning; or

2. A requirement for any of the following medical interventions:

- i. The need for around-the-clock nebulizer treatments, with chest physiotherapy;
- ii. Gastrostomy feeding when complicated by frequent regurgitation and/or aspiration; or
- iii. A seizure disorder manifested by frequent prolonged seizures, requiring emergency administration of anti-convulsants.

Additionally, the regulation goes on to exclude certain criteria that do not rise to the level of PDN services unless the criteria above is met:

(d) Services that shall not, in and of themselves, constitute a need for PDN services, in the absence of the skilled nursing interventions listed in (b) above, shall include, but shall not be limited to:

1. Patient observation, monitoring, recording or assessment;
2. Occasional suctioning;
3. Gastrostomy feedings, unless complicated as described in (b)1 above; and
4. Seizure disorders controlled with medication and/or seizure disorders manifested by frequent minor seizures not occurring in clusters or associated with status epilepticus.

N.J.A.C. 10:60-5.4(d).

Petitioner’s medical records do not demonstrate that she meets the level of care to support sixteen hours of skilled nursing care per day. Petitioner is not on a ventilator nor does she have an active tracheostomy. She does not require deep suctioning nor does he need around-the-clock nebulizer treatments and chest physiotherapy. Petitioner does get chest physiotherapy as needed. While Petitioner does have a seizure disorder, her last documented seizure prior to the reassessment was on December 5, 2020. The nursing notes

state that Petitioner occasionally does not tolerate her nighttime feeds, the notes do not state that Petitioner's feedings are complicated by frequent regurgitation and/or aspiration. While Petitioner believes that additional PDN hours are necessary to monitor Petitioner for seizures and aspiration risks during nighttime feeds, PDN services cannot be used purely for observation, monitoring, or assessment in the absence of a qualifying medical need. See N.J.A.C 10:60-5.4(d)1. Moreover, although Petitioner needs someone to assist her in all of her activities of daily living (ADLs), such as bathing, brushing her teeth, getting her ready for school, and changing her diapers, among other things, these are not skilled nursing tasks that need to be performed by a nurse and therefore, do not qualify for additional PDN hours.

Although the Initial Decision placed weight on Petitioner's previous hospitalizations between 2018 and early 2020, the records submitted by Preferred and Petitioner's providers for the reassessment showed that Petitioner's conditions were stabilizing, that she tolerated most of her feeds without frequent regurgitation and/or aspiration, her seizure disorder had not recently required emergency intervention, and that she had no recent hospitalizations. Further, the testimony in this matter occurred at hearing more than one year after the assessment was performed and the care that the witnesses testified that Petitioner needs differs from the nursing notes and records submitted by United to review. United's determination was based upon the records submitted to it for review and it appropriately determined that Petitioner's needs could be met by a two-hour reduction in her PDN services per day.

However, I am concerned that the assessment being appealed was conducted in December 2020, and that Petitioner's hearing dates did not occur until January 2022 and February 2022. It has now been over one and one-half years since the assessment, which makes it difficult to correctly determine the amount of services that Petitioner currently requires. Accordingly, Petitioner's current status must be reassessed.

THEREFORE, it is on this 17th day of August 2022,

ORDERED:

That the Initial Decision is hereby REVERSED and United shall assess Petitioner's current condition within four weeks of this decision to determine Petitioner's present medical necessity for PDN services.



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