



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Assistant Commissioner

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

J.R.,

PETITIONER,

v.

HORIZON NJ HEALTH,

RESPONDENT.

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ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. No. HMA 4114-2021

As Assistant Commissioner of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, Office of Administrative Law (OAL) case file and the documents filed below. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is February 21, 2022 in accordance with an Order of Extension.

This matter concerns the reduction of Petitioner's private duty nursing (PDN) hours by Horizon NJ Health (Horizon). Petitioner had been receiving PDN services for 24 hours a day, seven days a week. Those hours were reduced to sixteen hours per day, seven day a week as of January 20, 2021 and then to eight hours a day, seven days a week on February 21,

2021. R-7. Petitioner appealed this step down reduction of PDN hours.

Petitioner is two years old and was born prematurely. ID at 2. As a result she has received PDN hours from Star Pediatric Home Care Agency (Star Pediatric). During a routine reassessment for a new authorization period, Horizon reviewed clinical notes from Star Pediatric for Petitioner including 527 pages of nursing assessments comprising a two week period, a Home Health Certification and Plan of Care and a letter from Petitioner's doctor. ID at 3. Petitioner was then scored using the PDN Acuity Tool and it was determined that 8 hours a day were medically appropriate. Horizon stepped down Petitioner's hours over the course of two months with 8 hours a day to commence on February 18, 2021 which was upheld by an internal appeal. R-9. Petitioner then sought this hearing.

Petitioner challenged the reduction clinically and legally. On the clinical side, she argued that Horizon's use of the PDN Acuity Tool was inappropriate. ID at 7. Petitioner also argued that DMAHS guidance prevented the reduction or termination of PDN hours during the Public Health Emergency. The Initial Decision determined that Horizon's reduction of PND hours was supported by the record but found that the guidance prevented the reduction of hours. For the reasons that follow, I hereby ADOPT the finding that Horizon's determination to reduce Petitioner's hours was supported by the record including the nursing notes and the PDN Acuity Tool. However, I hereby REVERSE the Initial Decision that that the reduction in PDN hours was contrary to DMAHS policy.

As explained by Horizon employee Tamaria Brown, R.N., Petitioner's clinical nursing notes, which reflect all the tasks performed by Star Pediatric nurses, were reviewed to complete the PDN Acuity Tool. The tool is developed by Milliman Care Guidelines (MCG) and assigns a point value to the types of care being provided. ID at 7. Ms. Brown explained that in completing the tool she recorded the various tasks reflected in the clinical notes as well as tasks indicated on the Plan of Care that were not reflected in the clinical notes. ID at

4. For example, she inputted "oxygen needed routinely" on the tool to reflect notation on the plan of care that oxygen was as needed despite the fact that the clinical notes showed oxygen was not being administered. ID at 4. See R-3 and R-6. After completing the tool, the tasks were scored at 16 point which correlates to 4 to 7.9 hours per day of PDN. ID at 4 and R-6. Horizon authorized 8 hours of PDN as sufficient to meet Petitioner's needs.

I concur with the Initial Decision's finding that Horizon's reduction of Petitioner's PDN hours as determined by the PDN Acuity Tool was reasonable and based on the assessment of Petitioner's needs. While there does not appear to be a reported case regarding the use of the Milliman Care Guidelines developed for PDN, other jurisdictions have found that the use of Milliman Care Guidelines by hospitals "to evaluate medical necessity comports with generally accepted standards of care." See *Todd R. v. Premera Blue Cross Blue Shield of Alaska*, No. C17-1041JLR, 2021 U.S. Dist. LEXIS 129556, at *38-39 (W.D. Wash. July 12, 2021) "As Premera points out, numerous courts and commentators have identified the Milliman Care Guidelines as 'nationally recognized' and 'widely used.' See, e.g., *Norfolk Cty. Ret. Sys. v. Cmty. Health Sys., Inc.*, 877 F.3d 687, 690 (6th Cir. 2017) (noting that the Milliman Care Guidelines "were written and reviewed by over 100 doctors and reference 15,000 medical sources" and are used by about 1,000 hospitals nationwide. . .").

The clinical records used by Nurse Brown to complete the tool reflected Petitioner's nursing needs and included services on the Plan of Care but not being currently performed. The PDN Acuity Tool then provided a score that aligned with a range of hours which is used "in conjunction with the application clinical judgment and proper consideration" of any unique circumstances. R-6. Petitioner's score resulted in a range of 4 to 7.9 hours and lead Horizon to authorize 8 hours per day. I concur that Petitioner presented no evidence to contradict the use or accuracy of the PDN Acuity Tool by Horizon and the use of the tool is "reasonable and objective" to determine medical necessity for PDN hours. N.J.A.C. 10:60-5.3 and 10:74-1.4.

Petitioner's legal argument claimed that DMAHS guidance to Managed Care Organizations (MCOs) issued on March 30, 2020, updated on May 16, 2020 and again on October 15, 2020 that outpatient services which require face-to-face assessments were to be extended with no reductions in services until the end of the Public Health Emergency applies to Petitioner's case. Guided by an Initial Decision decided in *A.D. vs. United HealthCare*, HMA 02915-2021 (August 24, 2021), the ALJ found that this argument was correct and reversed the reduction of PDN hours. I disagree.

The decision in *A.D.* was a recommended decision, subject to review by the agency head who has the authority to adopt, modify or reject the Initial Decision including the "interpretations of agency policy in the decision," and was reversed in November 2021. N.J.S.A. 52:14B-10(c). In doing so I explained that the guidance cited by Petitioner does not prohibit the reassessment of Petitioner's authorization for PDN hours. The guidance limited the extension of prior authorization to "outpatient services which require face to face assessments." Unlike other services, the rules to reauthorize PDN services for on-going medical necessity do not require the MCO to send anyone into the home to perform an assessment. PDN authorizations rely on the clinical records and assessments that are done by the provider agency nurses performing the service. N.J.A.C. 10:60-5.5 (a) and (f). The October 15, 2020 guidance did not suspend the regulatory requirement that the nursing agency maintain clinical records for "each beneficiary receiving private duty nursing services" including the "documentation of all care rendered" and reassessments of the beneficiary. N.J.A.C. 10:60-5.6. It is those required records that form the basis for the new authorization period. See N.J.A.C. 10:60-5.5. As such the guidance does not apply to PDN services.

In fact, the Initial Decision's finding that while Nurse Brown "did not personally observe [Petitioner], such observation is not usually part of the review process and should have made no difference in her testimony, as she is entitled to rely on the clinical information in the Plan of Care the clinical assessment [from] Star Pediatric agency. . . shortly before the change in

services was determined” further demonstrates that the guidance would not apply to PDN authorizations. ID at 5. The PDN reassessment by the MCO is done using clinical notes and records that are required to be completed by the providing agency in accordance with accepted professional standards. N.J.A.C. 10:60-5.6(a). That requirements was not waived by the guidance. Thus, I FIND that Horizon was permitted to take action on Petitioner’s PDN hours based on clinical records required to be maintained by the PDN agency.

THEREFORE, it is on this 18th day of JANUARY 2022,

ORDERED:

That the Initial Decision is hereby ADOPTED in PART and REVERSED in PART; and

That the reduction on PDN hours is hereby upheld.



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