



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

M.S.M.,	:	
	:	
PETITIONER,	:	<b>ADMINISTRATIVE ACTION</b>
	:	
v.	:	<b>FINAL AGENCY DECISION</b>
	:	
UNITED HEALTHCARE,	:	<b>OAL DKT. No. HMA 02937-2022</b>
	:	
RESPONDENT.	:	

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.<sup>1</sup> Procedurally,

<sup>1</sup> Petitioner’s mother, L.M. submitted a letter, dated June 7, 2022 and titled “EXCEPTIONS”, to DMAHS and to the OAL. The letter was received after the present matter was remanded on April 12, 2022 for clarification of the record, after the record was closed on remand on May 31, 2022, and before the Initial Decision in this matter was issued on June 21, 2022. However, it appears that the letter was in response the April 12, 2022 Order of Remand and was also, thus, not timely filed within seven days of the date of the January 26, 2022 Initial Decision, pursuant to N.J.A.C. 1:10B-18.2(b). It is unclear whether this letter was served on counsel for United Healthcare, pursuant to N.J.A.C. 1:10B-18.2. As the letter was not submitted pursuant to N.J.A.C. 1:10B-18.2, the letter cannot be considered as exceptions to the current matter. Moreover, I note that the letter refers to and includes by reference letters, notes, articles, and emails that were not admitted into evidence in this matter. Pursuant to N.J.A.C. 1:1-18.4, evidence that is not presented at the hearing shall not be submitted as part of an exception and it shall not be incorporated or referred to within

the time period for the Agency Head to render a Final Agency Decision is September 19, 2022, in accordance with an Order of Extension. This matter was previously remanded to the OAL for the purpose of clarifying the record, including the exhibits that were admitted into evidence at the hearing in this matter.

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 August 2021, 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 sixteen hours per day Monday through Friday and eight hours overnight on Saturday and Sunday.<sup>2</sup>

Petitioner is six-years-old whose medical history includes a chromosomal abnormality, developmental delays, chronic respiratory insufficiency, macrocephaly, a neurologic disorder, and febrile seizures. Prior to United reassessment of Petitioner in August 2021, Petitioner has not had a seizure since 2018.<sup>3</sup> ID at 3. Petitioner is on a Continuous Positive Airway Pressure (CPAP) overnight. Ibid. He receives daily chest physiotherapy (PT) and nebulizer treatments. Ibid. He is able to take food by mouth, without the use of a feeding tube. 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 specifically found that

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exceptions.

<sup>2</sup> Specifically, United reduced Petitioner's PDN hours to eight hours per day, seven days per week overnight and eight hours per day, five days per week during the day Monday through Friday.

<sup>3</sup> The Initial Decision provides that Petitioner has not had a seizure since 2018. ID at 3. However, United's decision letters provide that Petitioner's last known seizure was in 2016. R-8 and R-9.

Your child has had no recent hospital visits. Your child has not needed to use the emergency room. Your child can breathe on his own. Your child needs Continuous Positive Airway Pressure (CPAP) support overnight. This is for six (6) to ten (10) hours. Your child does not need extra oxygen. Your child receives chest physiotherapy twice (2) a day. Your child has not required nebulizers. Your child takes oral feedings very well. Your child has been gaining weight appropriately. Your child has a diet of soft or chopped food. Your child has not had a recent seizure. The last documented seizure is from 2016. Your child is on medications for seizures. Your child has rescue medications. Your child has not needed the rescue medications. Your child's skilled needs are overnight. Your child needs nursing support when his family care providers are unavailable for work.

R-8. As a result, United determined that Petitioner's PDN hours should be reduced to sixteen hours per day, Monday through Friday and eight hours per day, Saturday and Sunday. Ibid.

Petitioner's mother, L.M., appealed the determination, and following an internal appeal, which involved Dr. David Sorrentino, M.D., M.H.A., medical director at United, United upheld its initial determination that Petitioner's PDN hours should be reduced. R-9. Dr. Sorrentino determined that Petitioner does not meet the criteria for the PDN hours requested, and testified that Petitioner's medical records show that daily PDN services were not needed on weekends. ID at 3. Dr. Sorrentino stated that PDN services were provided during the weekdays to accompany Petitioner to school, but Petitioner's medical records do not show that Petitioner needs medical care all day, every day. Ibid. He further testified that Petitioner's caregiver provides Petitioner with his daily medications, nebulizer treatments, and some respiratory therapy. Ibid. The nursing assessments and report completed by Petitioner's case manager, which were reviewed by Dr. Sorrentino, showed that Petitioner does not have any reflux or aspiration issues that were reported; Petitioner does not have a tracheostomy or require deep suctioning; Petitioner does not need round-the-clock nebulizer treatments; and while Petitioner does get chest PT, Dr. Sorrentino testified that this is not a task that requires skilled nursing services. Id. at 4-5.

Following the results of the internal appeal, L.M. requested 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 Pediatrics and Pediatric Pulmonology. R-10. The reviewer determined that Petitioner's condition appeared to be stable with no recent acute neurologic or pulmonary events, and therefore, United's reduction of Petitioner's PDN services was appropriate and sufficient to meet Petitioner's skilled nursing needs. Ibid.

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

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 he meets the level of care to support sixteen hours of skilled nursing care per day. Petitioner is not on a ventilator nor does he have an active tracheostomy. He does not require deep suctioning nor does he need around-the-clock nebulizer treatments and chest physiotherapy. He does not have gastrostomy feedings that are complicated by frequent regurgitation or aspiration. While Petitioner does have a seizure disorder, the nursing records reviewed did not show that emergency medication was routinely administered to Petitioner as a result of prolonged seizure activity. Petitioner requires a CPAP at night, and the reduction in PDN hours will not affect Petitioner's nightly skilled nursing needs, as Petitioner will still receive eight hours of PDN services every night. While L.M. testified that she is concerned about the reduction in hours because she is not a nurse and if something happened, she would not know what to do, 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.

Thus, for the reasons stated above, I FIND that Petitioner was properly reassessed, and Petitioner's reassessment and the supporting clinical records fail to demonstrate that Petitioner meets the criteria for medical necessity to support sixteen hours per day of PDN services. As such, the reduction of PDN services to sixteen hours per day, Monday through Friday, and eight hours per day, Saturday and Sunday, was appropriate under N.J.A.C.

10:60-5.4. However, it has now been over a year since the reassessment at issue was completed, which makes it difficult to determine the amount of services that Petitioner currently requires. Accordingly, Petitioner's current status must be reassessed.

THEREFORE, it is on this 13th day of SEPTEMBER 2022,

ORDERED:

That the Initial Decision is hereby ADOPTED; and

That United shall assess Petitioner's current condition within four weeks of this decision to determine Petitioner's present medical necessity for PDN services.

*Gregory Woods*

OBO JLJ

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