



per day, seven days per week. In July 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 twelve hours per day, seven days per week.

At the time of the reassessment, Petitioner was seven-years-old. Petitioner is developmentally disabled, non-verbal, and wheelchair bound. The Initial Decision noted that Petitioner is able to sit unsupported, which is contested by Petitioner's mother, R.G., in Petitioner's exceptions to the Initial Decision. Petitioner suffers from a seizure disorder, for which he takes daily seizure medication. Petitioner needs assistance with all activities of daily living (ADLs), but is able to take food by mouth, without the use of a feeding tube.

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 based its decision on Petitioner's seizures being "self-limited and brief" and not needing rescue seizure medication, per the nursing notes provided for the reassessment. R-7. United specifically noted that

Your child has no recent hospitalizations. Your child has not needed to use the emergency department recently. Your child can breathe on his own. Your child does not need mechanical support to breath [sic]. Your child does not need extra oxygen. Your child can take feeds by mouth. Your child can eat on his own. Your child does not need tube feedings. Your child does require feeding therapy. Your child has a history of seizures. Your child is on medications for his seizure disorder. When he has seizures, they are self-limited and brief. Your child has not needed rescue seizure medications, as per his nursing notes. Your child had a recent neuropsychiatric evaluation showed he is continuing to have Electroencephalogram (EEG) changes. These changes are consisted with decreased seizure threshold. Your child was also evaluated for autism. Your child's findings are not consistent with autism.

Ibid. As a result, United determined that Petitioner's PDN hours should be reduced to twelve hours per day, seven days per week. Ibid.

Petitioner's mother, R.G., appealed the determination, and following an internal appeal, which was performed by 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-6. Dr. Sorrentino determined that Petitioner does not meet the criteria for the PDN hours requested, and testified that Petitioner's nursing notes from March, May, and June 2021 described seizures of short duration, which did not require the administration of rescue medication. ID at 5. He further testified that the July 2021 nursing notes showed that Petitioner had no seizure activity. Ibid. Dr. Sorrentino found that Petitioner's needs could be met with PDN services of twelve hours per day. R-5.

Following the results of the internal appeal, R.G. 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 a board certified Pediatrician and is board certified in Neurology with special qualifications in Child Neurology. R-3. The reviewer determined that Petitioner's seizure activity had decreased, lasting approximately three to twenty-five seconds, often while Petitioner slept. Ibid. The reviewer further determined that Petitioner's medical conditions have been stable, and therefore, United's reduction of Petitioner's PDN services to twelve hours per day, seven days per week 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.<sup>2</sup> 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

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<sup>2</sup> I note that R.G. testified that Petitioner should be receiving twenty-four hours of PDN services, seven days per week. However, it does not appear that Petitioner ever received PDN services in excess of sixteen hours per day, seven days per week.

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. In fact, the nursing records showed that Petitioner's seizures were decreasing. While Petitioner believes that additional PDN hours are necessary to solely monitor Petitioner for seizures as a safety precaution, 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 twelve hours per day, seven days per week was appropriate under N.J.A.C. 10:60-5.4.

THEREFORE, it is on this 2nd day of SEPTEMBER 2022,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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