



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

S.L.,	:	
	:	
PETITIONER,	:	<b>ADMINISTRATIVE ACTION</b>
	:	
v.	:	<b>FINA AGENCY DECISION</b>
	:	
UNITED HEALTHCARE,	:	<b>OAL DKT. No. HMA 06243-2022</b>
	:	
RESPONDENT.	:	<b>(ON REMAND HMA 11092-2020)</b>

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 December 12, 2022, in accordance with an Order of Extension. This matter was previously remanded for clarification regarding how many private duty nursing (PDN) hours Petitioner was receiving per week and day.

This matter concerns the reduction of Petitioner's PDN hours by United Healthcare (United). Petitioner is thirty-one-years-old whose medical history includes "Congenital Malformation, Other specified diseases upper respiratory tract, Cleft Palate bilaterally,

Encounter for attention to Gastrostomy, Choanal atresia, Recurrent sinusitis/Otitis/Rhinitis, Failure to thrive (child), Other asthma, Other seizures, Gastro-esophageal reflux disease without esophagitis, Growth hormone deficiency, [and] developmental delays.” R-4.

Petitioner appears to have been receiving PDN services since November 1995. ID at 4 (citing R-2). However, since February 22, 2018, she has been receiving PDN services at a rate of fifty-six hours per week. Ibid. at 3. Specifically, Petitioner has been receiving seven hours of PDN services per day, Sunday through Friday, and fourteen hours of PDN services on Saturday.<sup>1</sup> Ibid. In reviewing the matter for a new authorization, United determined that these hours were no longer medically necessary and sought to reduce Petitioner’s PDN hours from fifty-six hours per week to forty-nine hours per week.<sup>2</sup> Ibid. Under the reduction of services, Petitioner would still receive seven hours of PDN services on Sunday through Friday; however, her PDN services on Saturday would be reduced from fourteen hours to

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<sup>1</sup> The Initial Decision notes that Petitioner’s mother testified that from September 28, 2017 through February 22, 2018, Petitioner was authorized to receive eight hours per day of PDN services, seven days per week. ID at 3 (citing J-1). However, Petitioner’s mother stated that the same schedule of seven hours of PDN services from Sunday through Friday and fourteen hours of PDN services on Saturday as been utilized. Ibid. Currently, Petitioner receives the seven hours of PDN services from 11:00pm through 6:00am Sunday through Friday and from 5:00pm through 7:00am on Saturday. ID at 4.

<sup>2</sup> I note that United’s initial determination letter, dated November 16, 2020, provided that it was denying Petitioner’s request for seven hours per day, six days per week and fourteen hours per day, one day per week of PDN services. R-5. However, under the “Reason for this action” section of the letter, it provided that Petitioner “now get[s] fourteen (14) hours per day, seven (7) days per week of [PDN] services.” Ibid. The letter additionally provides that “[y]ou now get fifty-six (56) hours per week.” Ibid. Further, the letter provided that “[y]ou will get fourteen (14) hours per day, seven (7) days per week of private duty nursing. You will get this 10/31/2020 to 11/24/2020. Then, you will get seven (7) hours per day, seven (7) days per week of private duty nursing. You will get this 11/25/2020 to 1/28/2021. You will get these hours at night.” Ibid. The Internal Appeal letter, dated November 23, 2020, provided that United was upholding its November 16, 2020 determination to deny Petitioner’s request for seven hours per day, six days per week and fourteen hours per day, one day per week of PDN services. R-7. However, the “Reason for this action” section of the letter states “[y]ou asked to continue [PDN services of] 14 hours a day” and provides that Petitioner’s PDN hours would be reduced to 7 hours per day, as United concluded that fourteen hours per day was not medically necessary. Ibid.

seven hours. Ibid. To support the reduction in services, United found that Petitioner uses a “PAP at night [and gets] a shot at night. Private duty nursing will help you at night;” however, “[e]xtra private duty nursing on the weekend is not medically necessary. . . . Private duty nursing for caregiver convenience is not medically necessary.” R-5.

Petitioner’s parents, J.L. and M.L., appealed the determination, and following an internal appeal, which involved Dr. Amy Aronsky, D.O., medical director at United and who is Board Certified in Internal Medicine, United upheld its initial determination that Petitioner’s PDN hours should be reduced. R-7. Dr. Aronsky determined that Petitioner does not meet the criteria for the PDN hours requested, and testified that Petitioner’s medical records show that additional skilled nursing care on Saturday was not medically necessary. ID at 5. Dr. Aronsky determined that Petitioner “need[s] skilled nursing help at night . . . to give [Petitioner] a shot and monitor [her] breathing. . . . 7 hours a day can meet [Petitioner’s] skilled nursing needs[, and Petitioner’s] needs for monitoring during the day can be met by [her] family and school.” R-7.

Dr. Aronsky testified that Petitioner does not depend on a mechanical ventilation in order to breathe and she does not have an active tracheostomy. Id. at 6. Petitioner does have a bilevel positive airway pressure (BiPap) machine that is used at night, which is hooked up to an oxygen tank, and a complete respiratory assessment is conducted. ID at 5. Petitioner also receives nebulizer treatments and suctioning as needed and receives a growth hormone by injection into the deltoid muscle at night. Ibid. Petitioner has a gastrostomy tube (G-tube) inserted into her stomach for feedings; however, Dr. Aronsky testified that none of the nursing notes reviewed, including notes from the Saturday shift, indicated that Petitioner receives her food through the G-tube and instead, the notes reflected that Petitioner is fed by mouth. Ibid. (citing R-3). Dr. Aronsky further testified that the additional seven hours requested on Saturdays are used mostly for monitoring Petitioner. Id. at 7.

Petitioner argues that she meets the skilled nursing standards necessary to maintain her PDN services at fifty-six hours per week and specifically, fourteen hours per day on Saturday. 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 she meets the level of care to support fourteen hours of skilled nursing care on Saturday, and thus, does not meet the level of care to support continuation of the fifty-six hours of PDN services that she has been receiving per week. Petitioner is not on a ventilator nor does he have an active tracheostomy. There is also nothing in the record to support a finding that Petitioner suffers from a seizure disorder. While she has a G-tube, she is fed by mouth. Therefore, she does not have gastrostomy feedings that are complicated by frequent regurgitation or aspiration. While she receives nebulizer treatments and suctioning at night, she does not require deep suctioning or around-the-clock nebulizer treatments and chest physiotherapy. Petitioner requires a BiPap, a complete respiratory assessment, and injection of a growth hormone at night. The reduction in PDN hours will not affect Petitioner's nightly skilled nursing needs, as Petitioner will still receive seven hours of PDN services every night. While Petitioner's parents are concerned about the reduction in hours because of Petitioner's self-injurious behaviors, 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 fourteen hours per day of PDN services on Saturdays. As such, the reduction of PDN services to forty-nine hours per week or seven hours per day, seven days per week, was appropriate under N.J.A.C. 10:60-5.4. However, it has now been more than two years 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 6th day of DECEMBER 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.



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