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DEPARTMENT OF HUMAN SERVICES

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

A.C.,

PETITIONER,

ADMINISTRATIVE ACTION

v.

FINAL AGENCY DECISION

DIVISION OF MEDICAL ASSISTANCE :

OAL DKT. NO. HMA 11600-23

AND HEALTH SERVICES AND

HORIZON

RESPONDENTS.

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. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency

Decision is July 29, 2024, in accordance with an Order of Extension.

This matter arises from Horizon's September 1, 2023 decision to reduce Petitioner's Private Duty Nursing (PDN) Services, from sixteen hours per day, seven days a week to twelve hours per day, seven days a week. The reduction of hours was based on Petitioner's PDN Acuity score falling between twenty-eight and thirty-five points on the State-approved acuity grid qualifying a beneficiary for up to twelve hours of PDN services per day. (R-1, R-2). Petitioner pursued an internal appeal, which was denied on October 1, 2023. (R-3). Thereafter, on October 16, 2023 Petitioner pursued an external appeal through Maximus, an organization that contracts with the State of New Jersey Department of Banking and Insurance to provide independent external reviews of adverse benefit determinations. The independent review, which was binding on Horizon, concluded that Horizon's denial of coverage for sixteen hours per day, seven days per week of Private Duty Nursing services as not medically necessary should be upheld. (R-4), See N.J.A.C. 11:24-8.7(j).

After concluding the appeal, this matter was transferred to the Office of Administrative Law (OAL). On April 26, 2024 a hearing was held and the OAL issued an Initial Decision finding that the number of hours of PDN services was properly reduced. I concur.

Under the Medicaid/NJ Family Care program children under the age of 21 years old are eligible to receive any medically necessary service, including PDN. Licensed nurses, employed by a licensed agency or healthcare services firm approved by Division of Medical Assistance and Health Services, may provide PDN services in the home to beneficiaries. Private duty nursing services are defined as "individual and continuous

nursing care, as different from part time or intermittent care, provided by licensed nurses in the home. . .” N.J.A.C. 10:60-1.2. To be considered in need of PDN services, “an individual must exhibit a severity of illness that requires complex intervention by licensed nursing personnel.” N.J.A.C. 10:60-5.3(b). “Complex” means the degree of difficulty and/or intensity of treatment/procedures.” N.J.A.C. 10:60-5.3(b)(2). “Ongoing” is defined as “the beneficiary needs skilled nursing intervention 24 hours per day/seven days per week.” N.J.A.C. 10:60-5.3(b)(1). The regulations define “skilled nursing interventions” as “procedures that require the knowledge and experience of licensed nursing personnel, or a trained primary caregiver.” N.J.A.C. 10:60-5.3(b)(3).

Patient observation and monitoring alone do not qualify for this type of care. N.J.A.C. 10:60-5.4(d). However, the regulations addressing the medical necessity for private duty nursing services state that patient observation, monitoring, recording and assessment may constitute a need for private duty nursing services provided that the beneficiary is ventilator dependent, has an active tracheostomy and needs deep suctioning. N.J.A.C. 10:60-5.4(b)(1). Medical necessity may also be established if the individual needs around-the-clock nebulizer treatments, with chest physiotherapy; gastrostomy feeding when complicated by frequent regurgitation and/or aspiration; or a seizure disorder manifested by frequent prolonged seizures, requiring emergency administration of anti-convulsants. N.J.A.C. 10:60-5.4(b)(2). However, private duty nursing cannot be used purely for monitoring in the absence of a qualifying medical need.

Petitioner, a ten-year-old child, was diagnosed with malignant neoplasm of the brain, hydrocephalus, presence of cerebrospinal fluid drain device, paralysis of vocal cords and larynx, tracheostomy, gastrostomy and dysphagia. (R-5, R-6). In 2019 the

PDN Acuity Tool, used by Horizon to authorize PDN services, assigned Petitioner a score of 32.5 and as a result Petitioner was authorized for receive sixteen hours of PDN. At that time Petitioner required a clinical assessment every hour or more, was communication impaired, needed central line assessment, required infusions every four hours, needed assistance with activities of daily living, including rehabilitation every three hours, had nebulizer treatment every four hours, and required tracheostomy management and replacement. (R-15).

A reassessment of Petitioner was conducted on July 5, 2023 which showed improvement in Petitioner's condition leading to a reduction in the required PDN hours. Specifically, the reassessment showed Petitioner required fewer clinical assessments per day, no longer needed central line access management or rehabilitation therapy, and tracheostomy management was no longer listed as a complicated. The assessment noted that Petitioner was in good health, with a good prognosis and had progressed towards her goals with no history of recent illness, distress, or hospitalizations. Petitioner was assessed as low risk for emergency department visits and risk of re-hospitalization. Petitioner was enrolled in school and was tolerating it well. Petitioner was also able to tolerate travel well. Petitioner's mother, A.E., had been trained in Petitioner's care with respect to the aspiration of Petitioner's airways, medications, and feeding tubes. Further, the PDN notes from July 31, 2023 through August 13, 2023 showed no irregularities or complications with Petitioner's care (R-10, R-11). Petitioner's improvements were reflected in the decreased PDN score from 32.5 to 28 points. (R-6).

Thereafter, on August 17, 2023 A.E. submitted a request to Horizon to approve sixteen hours of PDN. (R-8) In support of the request, A.E. supplied an August 3, 2023

letter from Petitioner's provider, A.G., stating "please consider [Petitioner] uses a feeding tube, has scoliosis, tracheostomy status, cerebrospinal fluid drainage device." (R-7). A.G.'s letter does not state any future recommendation for PDN or provide any justification for rebutting Horizon's determination. (R-7). Furthermore, A.G.'s July 6, 2023 Plan of Care stated Petitioner was doing well with no changes to the current plan needed, and recommended twelve to sixteen hours of PDN care. (R5, R-12, R-13).

Further, the ALJ found that at the hearing, Horizon nurse, A.C., provided detailed testimony and specifics as to how Horizon arrived at the PDN Acuity Tool. While A.E. testified that Petitioner needs someone to watch them during the nighttime hours, no expert or competent evidence was provided to rebut or refute the PDN score.

Thus, for the reasons stated above, I concur with the initial decision finding that Petitioner was properly reassessed and Petitioner did not provide any supporting clinical records to demonstrate that Petitioner met the criteria for medical necessity to support sixteen hours per day of PDN services at the time of the July 5, 2023 assessment. 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. However, it has been a year since the most recent reassessment was completed, which means there may be a change in the amount of services that Petitioner currently requires. Accordingly, Petitioner's current status must be reassessed.

Thus, for the reasons set forth above and those contained in the Initial Decision, I hereby ADOPT the Initial Decision in this matter.

THEREFORE, it is on this 26th day of June 2024,

ORDERED:

That the Initial Decision is hereby ADOPTED.

Gregory Woods

Gregory Woods, Assistant Commissioner
Division of Medical Assistance and Health Services