



This matter arises from Horizon's September 7, 2023 decision to terminate Petitioner's Private Duty Nursing (PDN) Services on the grounds that it was not medically necessary and can be performed by a lay caregiver. (R-2). Petitioner's mother, B.L., pursued an internal appeal, which was denied. (R-3). Thereafter, B.L. 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, affirmed the denial. (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. On November 15, 2023 a hearing was held and the OAL issued an Initial Decision finding the refusal to provide PDN was improper, citing Petitioner's complex medical needs, and accordingly reversed Horizon's denial.

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. 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). 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 EPSDT/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). "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).

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 is a two-and-a-half-year-old child whose diagnoses include prematurity, trisomy 21 translocation, feeding difficulties, presence of gastrostomy, primary pulmonary hypertension, atrioventricular septal defect, prior dependence on supplemental oxygen and a seizure disorder.<sup>1</sup> (R-2, R-3, R-4). Horizon conducted a reassessment of Petitioner in September 2023 in which Horizon concluded the following:

The request for 8 hours per day, 7 days a week of [PDN] services for your child has been denied. We understand that your child has complex medical problems. Your child is not on a breathing machine. Your child does not have a seizure disorder. [They are] not receiving oxygen. Your child takes some feeds by mouth and some through a stomach tube. Your Child needs hands-on assistance with all basic activities of daily living, diaper changes, hygiene, moving around and feeding. Your child requires aspiration (breathing in food or drink) precautions. Custodial care and health maintenance such as giving medications- does not required a licensed nurse and can be provided by a trained care giver. Your child does not have any skilled needs.

(R-2).

In the Initial Decision the ALJ found that B.L. lacked the necessary education, training, and experience to manage Petitioner's conditions adequately on her own, especially considering the potential medical emergencies related to Petitioner's pulmonary hypertension and heart condition. A Letter of Medical Necessity dated August 21, 2023 written by Petitioner's physician notes that Petitioner's birth was premature, her history also includes Trisomy 21; AV canal repair (heart surgery to repair the Atrioventricular septal defect); pulmonary hypertension; feeding difficulties; and a history of Bronchopulmonary Dysplasia (BPD) a chronic lung condition involving the

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<sup>1</sup> The assessment notes that Petitioner was on oxygen for several months and was off oxygen at the time of the assessment. Further the ALJ inadvertently notes that Petitioner was a two-and-a-half-month old child in the initial decision (R-4).

underdevelopment of lung tissue, often found in babies born prematurely. (R-6). However, Petitioner did not produce testimony from a treating physician or nurse during the OAL hearing.

The ALJ relied on the definition of “medically necessary services” set forth in N.J.A.C. 10:74-1.4 in concluding that Petitioner’s fragile health and multiple medical issues necessitated PDN care for eight hours a day, seven days a week. The Initial Decision found that B.L.’s efforts and her employers’ assistance in applying for PCA (home health aide) services did not negate the necessity of PDN care, as home health aides are not qualified to provide the level of medical care Petitioner requires. The ALJ specifically noted that Petitioner’s lung condition was unstable due to her serious and dangerous pulmonary hypertension and that B.L. would not be able to deal effectively with a breathing emergency.

However, while The ALJ determined that skilled hours were required for Petitioner’s unstable lung condition, Petitioner’s PDN medical record shows no skilled nursing interventions for Petitioner’s respiratory needs. (R-8, R-9). Further, N.J.A.C. 10:60-5.4(d) clearly states that in the absence of skilled nursing interventions listed in N.J.A.C. 10:60-5.4(b), PDN services are not available for observation, monitoring or assessment.

Accordingly, this matter is REVERSED and REMANDED for further proceedings to clarify the specifics of Petitioner’s medical necessity. The focus should be on determining whether Petitioner’s needs require more than general monitoring of her lung and/or breathing condition, and whether skilled nursing interventions are necessary due to the severity of her condition. The remand should specify which skilled nursing

interventions are required and may include, but not be limited to, detailed and specific testimony from Petitioner's treating physician(s) or nurse(s) to provide a comprehensive assessment of Petitioner's medical condition and need for PDN services.

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

ORDERED:

That the Initial Decision is hereby REVERSED and REMANDED as set forth herein.

*Gregory Woods*

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