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Assistant Commissioner

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

D.P.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
OFFICE OF COMMUNITY CHOICE
OPTIONS,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 12418-23

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the OAL case file, the documents in evidence, and the Initial Decision in this matter. Neither Party filed exceptions. Procedurally, the time period for the Agency Head to render a Final Agency Decision is September 16, 2024, in accordance with an Order of Extension.

This matter arises from the Division of Aging Services' (DoAS) July 22, 2023 denial of clinical eligibility for the Managed Long Term Services and Supports (MLTSS) program. The issue presented here is whether DoAS properly denied Petitioner's application under N.J.A.C. 8:85-2.1 and the New Jersey's section 1115 (a) demonstration.

Individuals requiring nursing facility (NF) services may have unstable medical, emotional/behavioral, and psychosocial conditions that require ongoing nursing assessment, intervention, and/or referrals to other disciplines for evaluation and appropriate treatment. Children requiring NF services exhibit functional limitation identified either in terms of developmental delay requiring care over and above routine parenting or are limited in terms of specific age-appropriate physical and cognitive activities, functional abilities, or abnormal behavior, as demonstrated by performance at home, school or recreational activities. Children who have achieved developmental milestones within appropriate time frames and who require only well-child care and/or treatment of acute, time-limited illnesses or injuries shall not be eligible for NF services. N.J.A.C. 8:85-2.1.

The special terms and conditions set forth by the Centers for Medicare & Medicaid Services for the New Jersey FamilyCare Comprehensive Demonstration MLTSS program provide that a child ages birth through twenty must be clinically eligible for MLTSS services when:

1. The child exhibits functional limitations, identified in terms of developmental delay or functional limitations in specific age-appropriate activities of daily living, requiring nursing care over and above routine parenting and meets one of the following criteria:

- a. Medical and/or intense therapeutic services for the medically complex child who exhibits a severe illness that requires complex skilled nursing interventions 24 hours per day, seven days a week.

b. Skilled Nursing Services must be based upon, but not limited to, at least one of the following: dependence on mechanical ventilation; gastrostomy feeding when complicated by frequent; regurgitation and/or aspiration; or is on continuous feeding for more than 4 hours at a time; seizure disorder manifested by frequent prolonged seizures requiring emergency administration of anticonvulsant medication in the last four months; medical and/or intense therapeutic services for the technology-dependent child who requires a medical device that the Federal Food and Drug Administration has classified pursuant to 21 C.F.R. 860.3, as amended and supplemented, as a life-supporting or life-sustaining device that is essential to or that yields information that is essential to, the restoration or continuation of a bodily function important to the continuation of human life.

2. These services must be provided if the life-supporting or life-sustaining device is necessary to compensate for the loss of a vital function, to avert death or further disability, and if the use of the device requires ongoing skilled nursing intervention.

On August 21, 2023, the Managed Care Organization (MCO) conducted an assessment of Petitioner to establish clinical eligibility for the MLTSS program for age birth through 20 under the New Jersey's section 1115 (a) demonstration. (R-5.) Petitioner's mother, S.E., requested MLTSS for disability care, physical, occupational, speech, and feeding therapies, as well as Medicaid. Ibid. Petitioner is a six-year-old who resides with their parents and sibling. Ibid. Petitioner has diagnoses of hypoplastic left heart syndrome, failure to thrive, developmental delays, sleep abnormalities, chronic constipation, and attention deficit hyperactivity disorder. Ibid. Petitioner attends public school and is not in a specialized program. Ibid. Petitioner receives weekly physical and occupational therapies at school. Ibid. Per S.E., Petitioner had difficulty of breathing at school but does not have a respiratory diagnosis. Ibid. Petitioner does not have seizures and does not depend on any technology or skilled nursing care. Ibid. At the time of

assessment, S.E. reported that Petitioner is not dependent on mechanical ventilation and has no active tracheostomy. Ibid. Petitioner is not receiving any deep suctioning, does not require around-the-clock nebulizer treatments with chest physiotherapy, and does not have gastrostomy feeding or seizure disorders. Ibid. S.E. told the assessor that Petitioner does not need skilled nursing care. Ibid. On August 22, 2023, DoAS denied Petitioner's application for MLTSS for failing to meet clinical eligibility in accordance with New Jersey's section 1115 (a) demonstration. (R-6.)

After the denial notice, S.E. requested a fair hearing. During the hearing, S.E. testified that Petitioner sought secondary medical coverage to offset ongoing medical care. ID at 3. S.E. acknowledged that Petitioner did not qualify for a nursing facility level of services. Ibid.

The Administrative Law Judge (ALJ) found that Petitioner had not established that Petitioner satisfied the clinical eligibility criteria for MLTSS. ID at 5. I agree with the ALJ's findings. During the assessment and hearing, S.E. agreed that Petitioner does not receive skilled nursing services for nebulizer treatment, chest physiotherapy, suctioning, or gastrostomy feeding. Petitioner does not have seizures requiring emergency care or anticonvulsant medication. Petitioner is not on mechanical ventilation, does not have a feeding tube, does not have a tracheostomy, and does not need deep suctioning.

Based on the record before me, I hereby ADOPT the Initial Decision in its entirety and incorporate the same herein by reference.

Thus, for the reasons stated above, I FIND that Petitioner was properly assessed and denied MLTSS program based on the assessment and S.E.'s testimony. S.E.'s testimony failed to demonstrate that Petitioner meets clinical eligibility criteria. As such,

the decision to deny MLTSS program was appropriate under N.J.A.C. 8:85-2.1 and New Jersey's Section 1115 (a) demonstration.

THEREFORE, it is on this 16th day of SEPTEMBER 2024,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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