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Assistant Commissioner

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

E.K.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
UNITED HEALTHCARE,	:	OAL DKT. NO. HMA 08347-24
	:	
RESPONDENT.	:	

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence and the contents of the Office of Administrative Law (OAL) case file. Neither party filed exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is January 2, 2024, in accordance with an Order of Extension.

This matter arises from United Healthcare's (United) January 9, 2024, denial of Petitioner's request for increased Private Duty Nursing (PDN) services from 16 hours per day, to twenty-four hours per day. Based upon my review of the record, I hereby ADOPT the Initial Decision which affirmed United's decision to deny Petitioner's request for increased PDN services.

PDN 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. New Jersey Is An Equal Opportunity Employer • Printed on Recycled Paper and Recyclable

10:60-1.2. The United Coverage Determination Guideline for PDN Services for New Jersey identifies that PDN services for individuals over twenty-one years of age is limited to those beneficiaries enrolled in MLTSS or Supports Plus program, and that for these beneficiaries, "the maximum PDN hours that can be received, beyond the 8-hour coverage requirement of the primary caregiver, is 16 hours per day. N.J.A.C. 10:60-5.9(f).

N.J.A.C. 10:60-5.8 governs eligibility for PDN services under the MLTSS program. To maintain eligibility, however, there must be a capable primary caregiver who resides with the individual and accepts twenty-four-hour responsibility for the health and welfare of the beneficiary. N.J.A.C. 10:60-5.B(b) 2. The primary caregiver also must agree to be trained or have been trained in the care of the individual and must agree to provide a minimum of eight hours of care to the individual during every twenty-four-hour period. N.J.A.C. 10:60-5.8(b)(3)-(4). Under N.J.A.C. 10:60-5.9, PDN services are to be provided in the home, are limited to a maximum of sixteen hours per day, and the primary caregiver must provide at least eight hours of daily care to the program beneficiary. The United guidelines for PDN services mirror the New Jersey regulations, thus, an adult primary caregiver must provide eight hours of coverage for the beneficiary under both the MLTSS and Supports Plus PDN Medicaid waiver programs.

Petitioner is a twenty-six-year-old who receives PDN services under the New Jersey Division of Developmental Disabilities Supports Plus PDN program (Supports Plus program). ID at 2. The Petitioner is diagnosed with a rare genetic neurological disease, familial dysautonomia, which is a degenerative disease. Id. The Petitioner receives sixteen hours of PDN services, seven days a week. Id. In December 2023, a hospitalization resulted in a tracheostomy, which requires the almost full-time use of a ventilator and continuous oxygen. Due to this change, the Petitioner requested PDN services for twenty-four hours per day, seven days a week. Id.

On January 9, 2024, United denied the request, citing N.J.A.C. 10:60-5.9., which limits PDN hours to sixteen hours per day. Id. Thereafter, petitioner sought an internal appeal from United which resulted in a March 19, 2024 denial. Id. Petitioner next sought an independent external appeal of United's decision, which is binding on both parties. Id. An April 12, 2024 letter upheld United's decision. Id. As a result, on May 31, 2024, the Petitioner filed a fair hearing request. Id.

The Petitioner's mother, A.L., testified at the fair hearing and confirmed that she is trained to take care of the Petitioner, including caring for the tracheostomy, administering medicine through the G-tube, and changing the humidifier water in the ventilator. Id. at 4. A.L. further testified that she works from home for thirty hours each week and can adjust her schedule to accommodate the Petitioner. She also stated that the Petitioner attends a year-round adult day program with a nurse five days a week for five hours a day.

In the Initial Decision, the Administrative Law Judge (ALJ) found that the Petitioner was enrolled in the MLTSS program from November 21, 2014 through June 30, 2019 when they disenrolled from MLTSS. Id. at 6. On June 1, 2019, the Petitioner was enrolled in the Supports Plus program. Id. The ALJ found that the New Jersey DDD Supports Manual describes the Supports Plus program, as a Medicaid waiver program where an individual eligible for services from the Division who needs PDN services may be better served through the Supports Plus program rather than MLTSS. The Supports Plus program also provides several other services including adult medical day care. Id. An individual cannot be in ML TSS and Supports Plus program at the same time but must choose between the programs. The ALJ found that according to N.J.A.C. 10:60-5.9(f), beneficiaries enrolled in MLTSS or Supports Plus program can receive a maximum or

sixteen hours of PDN services every day. As such, the ALJ dismissed the Petitioner's appeal. Id. I agree with the Initial Decision.

Under N.J.A.C. 10:60-5.9, PDN services are to be provided in the home, are limited to a maximum of sixteen hours per day, and the primary caregiver must provide at least eight hours of daily care to the program beneficiary. The United guidelines for PDN services mirror the New Jersey regulations, therefore, an adult primary caregiver must provide eight hours of coverage for the beneficiary under both the ML TSS and Supports Plus PDN Medicaid waiver programs. The Petitioner's mother, A.L., has been the primary adult caregiver for the Petitioner, as stated in the October 2023 and February 2024 assessments. A.L. has been trained to give the Petitioner necessary care, including identifying potential signs of an autonomic crisis, administering medications as necessary, and ventilator related care, and has provided this care to her son, often for more than the required eight hours.

Accordingly, for the reasons set forth above and those contained in the Initial Decision, I hereby ADOPT the Initial Decision and FIND that dismissing the Petitioner's appeal to increase their PDN hours from 16 hours per day, to twenty-four hours per day was appropriate.

THEREFORE, it is on this 31st day of December 2024,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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