

Petitioner is 11 years of age and has been diagnosed with unspecified respiratory failure, generalized idiopathic epilepsy, epileptic syndrome, not intractable and without status epilepticus, and epileptic syndrome not intractable and with status epilepticus. R-3. In a letter dated August 30, 2023, A.A., M.D., one of Petitioner's treating physicians, explained that Petitioner has several chronic conditions including chronic respiratory failure with tracheostomy and ventilator dependence, epilepsy, feeding difficulties with GT dependence and developmental delay. R-10. A.A. explained that Petitioner "is on the trilogy ventilator in Passive S BIPAP mode with Rise time 3 during the night hours and PRN." Ibid. A.A. also explained that when Petitioner is in bed he is provided heated humidified air via vent, receives multiple nebulizer treatments daily to maintain airway, receives chest vest therapy and cough assist BID to move and clear secretions. Ibid. A.A. further explained that Petitioner needs to be assessed continually for seizures, is on multiple seizure medications and requires emergency medication should the seizure last more than five minutes. Ibid. Lastly, A.A. explained that having nurses twenty-four hours per day, seven days per week will benefit Petitioner because they can provide assessments, medications, administer and monitor GT feedings, monitor cardio pulmonary status and without this level of care, Petitioner could be subject to further hospitalizations and developmental delays. Ibid.

In reviewing the matter for a new authorization, Horizon determined that twenty-four hours of PDN services per day, seven days per week, was not medically necessary. Horizon referred the matter to MES Peer Review Services (MES) for review.¹ R-5. After review, MES determined that the records do not support twenty-four hours of PDN services per day, seven days per week based on Petitioner's acuity score ranging from

¹ At times in its report, MES incorrectly refers to Petitioner as a female. R-5.

36 to 43.5 points. Ibid. The MES Peer Review Service clinical details note, in pertinent part:

The submitted information does not meet the request for 24 hours per day/7 days a week of PDN services for the DOS 10/01/2023 to 12/15/2023 based on Policy/Criteria Horizon NJ Health Policy Criteria:31C.096 Private Duty Nursing.

The policy utilized the MCG criteria and acuity score calculator to determine medical necessity and the approved PDN hours.

The appeal for coverage of private duty nursing 24 hours per day/7 days per week from 10/01/2023 to 12/15/2023 was reviewed again. The records show your child needs help with feedings, ventilator, and medicine. Based on his acuity, your child's needs can be met with 16 hours a day. As such, the criteria are not met. The request is not approved. It is not medically necessary. Ibid.

Based on this assessment, Horizon determined that Petitioner's PDN hours should be reduced to sixteen hours per day, seven days per week. Ibid.

Following the determination by MES, Petitioner filed an appeal for an external review by an independent utilization review organization (IURO). The IURO reviewer notes the following: 1) Petitioner's medical condition is complex which includes multiple organs, 2) Petitioner is ventilator dependent, has a g-tube and tracheostomy, 3) Petitioner has seizures and is at risk for aspiration. R-3. The reviewer explained that Petitioner receives medications via g-tube and has oxygen and aspiration precautions. Ibid. The reviewer further explained that being on a ventilator is an added risk and a minor technical or mechanical error can be fatal for the member. Ibid. Finally, the reviewer explained that PDN services are limited to 16 hours a day including services paid for by others within a 24-hour period. Ibid. As such, the reviewer determined that sixteen hours per day, 7 days per week of PDN services were appropriate to meet Petitioner's needs, and that a trained caregiver could provide care for the remaining eight hours. Ibid.

This matter was appealed to the Office of Administrative Law. The Administrative Law Judge (ALJ) made credibility determinations. As for N.M, Petitioner's mother, the ALJ determined that N.M. understood the extent of Petitioner's medical condition and what was required for Petitioner's care. ID at 3. The ALJ also determined that medical personnel who testified were credible and experienced in assessing PDN needs. Ibid. However, upon close review of the testimony provided by K.S., R.N, Horizon's Utilization Reviewer, the ALJ determined that K.S. overlooked key points in completing the September 15, 2023 PDN tool. More specifically the ALJ notes, K.S. checked off "mild" under the section entitled "nurse seizure management," on the PDN tool without reviewing the 2023 seizure log, which had not been requested. R-8, ID at 7. Another key point noted by the ALJ is that K.S. was unaware that Petitioner was blind, and as a result, failed to check off the category labeled "communication deficit management", which K.S. testified would have been checked off if Petitioner had been determined blind. ID at 7. Other disputed items noted by the ALJ regarding Petitioner's assessment relate to medication management monitoring, the revised 2023 assessment tool which no longer allowed both tracheotomy management and ventilator management as options to be selected separately, and the fact that K.S. failed to seek verification on Petitioner's mobility status during the assessment. ID at 7-9. As a result the ALJ determined that Horizon's decision to reduce Petitioner's twenty-four hours, seven days per week of PDN hours to sixteen hours, seven days per week is "unsupported by a preponderance the evidence," that Horizon failed to complete a thorough and accurate PDN assessment, and that there needs to be another PDN assessment before Petitioner's PDN hours are reduced. ID at 13. I agree. Based on the testimony presented and evidence submitted, it appears the assessment was completed without review of Petitioner's current medical status, or accurate review of all Petitioner's medical records. To be more specific, the

2023 Private Duty Nursing Acuity Tool (PDN Acuity Tool) shows that Petitioner was rated as “mild” for seizure management on the PDN Acuity Tool without review of seizure logs that showed otherwise. R-8, ID at 7. In another instance, under the category entitled “Rehabilitation/maintenance therapy management,” the section entitled “Communication deficit (e.g., visual, auditory, tactile) management went unchecked even though Petitioner was legally blind. ID at 7. Several other areas disputed involve modifications to the 2023 PDN assessment tool that resulted in Petitioner receiving a lower total score in 2023, how often and how much medication Petitioner received on a daily basis and issues whether Petitioner was scored adequately for wound care since the g-tube would also be required to be cleaned daily. As such, based upon my review of the record and the applicable regulations, I hereby ADOPT the Initial Decision.

The regulations state that private duty nursing services are defined as “individual and continuous nursing care, as different from part-time intermittent care, provided by licensed nurses in the home . . .” N.J.A.C. 10:60-1.2. To be considered for PDN services an individual must “exhibit a severity of illness that requires complex skilled nursing interventions on an ongoing basis. 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).

Medical necessity for EPSDT/PDN services shall be based upon, but may not be limited to, the following criteria in (b) or (b)(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.
- N.J.A.C 10:60-5.4(b)

In addition, 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).

Since medical necessity for PDN services has been established, Petitioner's family situation becomes relevant. N.J.A.C. 10:60-5.4(c)(1)(i). Here, Petitioner has a school-age brother who is severely asthmatic and suffers with mental distress issues. ID at 10. These facts become relevant when considering PDN hours as sibling care responsibility

and work related matters must be considered. As such, review of the entire family dynamic is relevant and must be viewed in accordance with regulations to determine the appropriate number of PDN hours based on these set of facts. N.J.A.C. 10:60-5.4(a)(3).

In this case, the record contains evidence that Petitioner's condition meets the requirements for PDN services. The only question that remains is how many hours are appropriate based on a review Petitioner's current medical condition. Petitioner was reassessed using the PDN Acuity Tool on January 5, 2020 and September 15, 2023. R-4, R-8. According to the January 2020 assessment Petitioner's total score was 60 and the September 2023 assessment scored Petitioner at 40.5.² Ibid. In comparing the two assessments, some categories that were available for selection in the 2020 assessment were eliminated in the 2023 PDN tool. However, one significant category that remained unchanged and checked off in both the 2020 and 2023 assessments is entitled, "Safety Management." This category identifies aspiration precautions, monitoring, management and supervision of licensed practical nurse or aid. R-4, R-8. This fact is confirmed by the IURO reviewer's report which notes Petitioner has aspiration and oxygen precautions. R-3. In addition, Horizon has failed to consider Petitioner's family situation in determining the appropriate amount of PDN hours. Based on the evidence in this matter, Petitioner does require complex, ongoing interventions by a licensed nurse twenty-four hours per day, seven days per week.

Accordingly, for the reasons set forth above and those contained in the Initial Decision, I hereby ADOPT the Initial Decision, and FIND that Horizon's reduction of PDN hours from twenty-four hours to sixteen hours per day, seven days per week was not appropriate in this matter.

² The ALJ inadvertently noted the PDN score in 2020 as 56 rather than 60. ID at 6.

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

ORDERED:

That the Initial Decision is hereby ADOPTED as set forth above.

Gregory Woods

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