



(Maximus). On September 20, 2023, Maximus upheld Horizon's decision to reduce Petitioner's PDN services. N.J.A.C. 11:24-8.7(a).

After concluding the internal and external administrative reviews, this matter was transferred to the Office of Administrative Law. On January 5, 2024, a fair hearing was held. Additional testimony was heard on March 11, 2024, and the record closed on that same day. On March 26, 2024, the OAL issued an Initial Decision. Based upon my review of the record, I hereby adopt the Initial Decision affirming Horizon's decision to reduce the level of Petitioner's PDN services.

The Petitioner is a 7-year-old child with congenital malformation syndrome; abnormalities of breathing; gross motor and speech delays; rod lengthening every three to four months; Vacteryl-VSD; solitary left kidney; microtia right ear; hemifacial macrosomia; anal atresia, vertebral anomalies; hypoplastic right thumb; tethered cord s/p laminectomy; vertebral fusion (T10-L2); imperforate anus; g-tube; neurogenic bladder; iron deficiency; and torticollis. R-7, and R-12-14.

The Petitioner had been receiving private duty nursing services for most of their life. Under the 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 receiving managed long-term support services (MLTSS) and Early and Periodic Screening, Diagnostic, and Treatment services (EPSDT) beneficiaries. N.J.A.C. 10:60-1.2, N.J.A.C. 10:60-5.1(a),(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). “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.

In August 2023 a PDN Acuity Tool was completed for a reassessment and the Petitioner was given credit for the following: clinical assessment two to three times every four hours; communication impairment; bowel and bladder incontinence at least daily; medication administration less often than every four hours; nebulizer treatment and management every four to twenty-four hours; enteral nutrition (pump or bolus) administration of feeding, residual check, adjustment or replacement of tube, and assessment and management of complication; gastrostomy tube care; ADL support

needed for more than four hours per day to maximize a patient's independence; communication deficit management; immobilizer management with removal and replacement every eight hours or more often; aspiration precautions, monitoring, and management; clinical monitoring and management while attending activities outside of the home environment; and supervision of licensed practical nurse or aide. (R-6.)

In the Initial Decision the Administrative Law Judge (ALJ) found that the Petitioner was not on mechanical ventilation, didn't have a tracheostomy, did not need deep suctioning, did not currently receive around-the-clock nebulizer treatments with chest physiotherapy, did not suffer from a seizure disorder or require emergency administration of anti-convulsants, did not require routine blood draws, infusions, or intravenous care, and did not require skilled wound care. ID at 12. The ALJ found that it was undisputed that the Petitioner's condition was generally improved as they no longer required an NG tube, and the colostomy has been reversed. They can now also attend school which also provided nursing services to the petitioner. Ibid.

The Petitioner scored twenty-five points on the August 2023 reassessment, which correlates to receiving four to eight hours of PDN services a day. R-6. However, Horizon authorized ten hours of PDN services a day because the Petitioner receives the ten-hour continuous feed through his g-tube overnight. Id. at 13.

The ALJ found that the letters of medical necessity that were submitted for Horizon's review in connection with the August 2023 reassessment mention the Petitioner's feeding regimen in support of the requested sixteen hours a day, seven days a week of PDN services, but do not specifically state what additional skilled nursing care the Petitioner requires during the additional six hours of PDN services being requested. R-1, and R12-15. In the Initial Decision the ALJ stated that the number of PDN hours must match the amount of skilled nursing care tasks that the Petitioner needs performed

by a nurse. ID at 17. The ALJ found that the Petitioner was progressing positively, and no longer required a colostomy or NG tube. Moreover, he started attending school where the school provides nursing care during school hours. The Petitioner is not on mechanical ventilation, does not have a tracheostomy, does not have a need for deep suctioning, does not currently receive around-the-clock nebulizer treatments with chest physiotherapy, does not suffer from a seizure disorder or require emergency administration of anti-convulsants, does not require routine blood draws, infusions, or intravenous care, does not require skilled wound care, and no longer has an NG tube or colostomy. Id. at 18.

Thus, for the reasons stated above, I FIND 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 16 hours per day of PDN services at the time of the August 2023 reassessment. As such, the reduction of PDN services to 10 hours per day, seven days per week was appropriate under N.J.A.C. 10:60-5.4.

THEREFORE, it is on this 19th day of JUNE 2024,

ORDERED:

That the Initial Decision is hereby ADOPTED.

*Gregory Woods*

OBO JLJ

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Jennifer Langer Jacobs, Assistant Commissioner  
Division of Medical Assistance and Health Services