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**DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES**

N.O.,

PETITIONER,

v.

HORIZON NJ HEALTH,

RESPONDENT.

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ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. No. HMA 01780-2024

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is August 29, 2024 in accordance with an Order of Extension.

This matter arises from Horizon New Jersey Health's (Horizon) decision to reduce Petitioner's Private Duty Nursing (PDN) Services from sixteen hours per day, seven days a week to twelve hours per day, seven days a week for the period of January 18, 2024 to March 27, 2024. Petitioner filed a request for an internal appeal and MES Peer Review Services affirmed Horizon's determination by letter dated January 21, 2024. R-3. Thereafter, Petitioner chose to pursue an external appeal through Maximus Federal Services Inc. (Maximus). On February 2, 2024, Maximus upheld Horizon's decision to reduce Petitioner's PDN services. N.J.A.C. 11:24-8.7(a). R-4.

At the time of the assessment, Petitioner was 3 years old. Petitioner has a primary diagnosis of jejunal atresia, GT (gastrostomy tube) in place, speech delay and plagiocephaly neurodevelopmental. R-3. In a letter dated May 13, 2024, S.K., M.D., one of Petitioner's treating physicians, explained that providing Petitioner with sixteen hours, seven days a week PDN services is critical to Petitioner's health.¹ A-1. S.K. explained that skilled nurses administer medication, provide continuous GT feedings, monitor intake and output, and protect Petitioner from aspiration when being fed through the g-tube overnight. Ibid. S.K. further explained that Petitioner's disease process "puts him at very high risk for fluid and electrolyte imbalances that could jeopardize his life." Ibid. In addition, S.K. explained that when Petitioner has fluid and electrolyte imbalances, he may end up hospitalized. Lastly, S.K. explained that "failure to maintain PDN services at sixteen hours, seven days per week will increase [Petitioner's] acuity and escalate his care needs to include possible hospitalization, re-initiation of TPN feeding and potential surgeries." Ibid.

In reviewing the matter for a new authorization, Horizon determined that sixteen 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. R-3. After review, MES determined that the records do not support sixteen hours of PDN services per day, seven days per week and was not medically necessary. Ibid. The MES Peer Review Service clinical details note:

The submitted information does not meet the request for 16 hours per day/7days a week of PDN services for DOS 01/18/2024 - 03/27/2024 based on Policy/Criteria Horizon NJ Health Policy Criteria:31C.096 Private Duty Nursing. The records do not support 16 hours per day. [H]e has jejunal

¹ The ALJ designates the letter dated May 13, 2024, prepared by Petitioner's medical provider as A-1 within the body of the Initial Decision, but fails to include it in the Appendix section of the decision. See Initial Decision at 3, 5.

astresia, GT in place, speech delay, plagiocephaly Neurodevelopmental.² [H]e does take some foods orally. [H]e had TPN, but that has stopped. The 12 hours that were approved are suffice to provide [his] care.

The records show that your child takes some foods by mouth. [H]e also has a tube for feedings. [H]e no longer takes [his] nutrition in [his] vein. The 12 hours that were previously approved are enough to safely meet your child's needs. ...the criteria are not met. Ibid.

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

Following the determination by MES, J.M. of Preferred Home Healthcare, filed an appeal on behalf of Petitioner for an external review by an independent utilization review organization (IURO). The IURO reviewer determined that Petitioner has increased oral secretions and is at risk of aspiration, which serves as a basis for PDN services. R-4. However, the reviewer notes the following: 1) Petitioner's medical condition is stable and improving and that Petitioner has not had any recent decline from the baseline status, 2) Petitioner does not have active respiratory failure or dependency on mechanical ventilation and that there is no evidence that the requested additional hours of nursing would "prevent illnesses or injury or change the member's health condition or outcomes," and 3) "a trained caregiver can manage the member's care when PDN's are not present." As such, the reviewer determined that twelve hours per day, 7 days per week as adequate to meet Petitioner's care needs. Ibid.

This matter was appealed to the Office of Administrative Law. During the hearing, Petitioner's father, Mr. O, testified that he and his wife are not skilled enough to observe Petitioner. See Initial Decision at 3. Mr. O also testified that in February 2024, the skilled nurse on duty noticed something off with Petitioner and had an inclination to administer

² In its review, Petitioner is incorrectly referred as "she." Petitioner is a male child.

Pedialyte for what appeared to be an electrolyte imbalance. Ibid. Mr. O further testified that Petitioner was later hospitalized, and believed it was the skilled nurses' observation that saved Petitioner's life. Ibid. After review of the record and testimony, the Administrative Law Judge (ALJ) reversed Horizon's reduction of Petitioner's PDN hours.

The Initial Decision determined that the PDN acuity tool and scoring used to determine the need for PDN services is inadequate because it fails to consider the entire family situation, which is required by regulation. The Initial Decision also determined that Petitioner's case is not that simple and "if N.O. were simply receiving feedings with a G-tube and no other complications existed to his care, his parents could take care of that or certainly a lesser level of care." The Initial Decision further determined that Petitioner "requires clinical, skilled nursing care as a matter of medical necessity from 7:00 a.m. to 3:00 p.m. and overnight." Lastly, the Initial Decision determined that Petitioner needs observation to detect symptoms of distress beyond what Petitioner's parent can provide, and that Petitioner will continue to improve with the aid of a skilled nurse, which is consistent with regulations for PDN services. N.J.A.C. 10:60-5.1. 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). Both Petitioner's parents maintain full time employment and have another school age child in the home. Petitioner's grandmother comes to the home Monday through Wednesday to take care of Petitioner after the day nurse leaves at 3:00 p.m.³ Mr. O. received permission from his employer to leave early on Thursdays and Fridays when Petitioner's grandmother is unavailable. Although the family has help from Petitioner's grandmother, neither parent has the ability to work from home and another young child resides in the home. As such, the entire family situation 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 Private Duty Nursing Acuity Tool (PDN Acuity Tool). Assessments were performed on January 14, 2021 and January 4, 2024. R-1, R-2. According to the January 2021 assessment Petitioner's total score was 23.5. R-1. The PDN Acuity Tool dated January 2024 fails to provide a specific score, and only notes a score of 19 is needed for PDN services. R-2. In comparing the two assessments, Petitioner has shown some improvement over the three-year period. However, one significant category that remained unchanged and checked off in both the 2021 and 2024 assessments is entitled, "Safety Management." This category identifies aspiration precautions, monitoring, management and supervision of licensed practical nurse or aid consistent with

³ Horizon incorrectly notes that Petitioner's grandmother resides in the home with Petitioner and his family. See Initial Decision at 5.

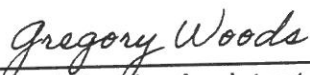
Petitioner's medical records that suggest aspiration precautions should be maintained. R-1, R-2, R-3, A-1. Horizon has failed to consider Petitioner's family situation in determining the appropriate amount of PDN hours. Based on the evidence in this matter, Petitioner does require complex, ongoing interventions by a licensed nurse sixteen 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 sixteen hours per day, seven days per week was not appropriate in this matter.

THEREFORE, it is on this 20th day of AUGUST 2024,

ORDERED:

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



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