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

O.M.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE :

AND HEALTH SERVICES AND :

HORIZON, :

RESPONDENTS. :

ADMINISTRATIVE ACTION

ORDER OF REMAND

OAL DKT. NO. HMA 14301-23

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the records in this case, including the OAL case file, the documents in evidence, and the Initial Decision in this matter. Petitioner filed exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is December 27, 2024, in accordance with an Order of Extension.

This matter arises from Horizon NJ Health's (Horizon) termination of Petitioner's Private Duty Nursing (PDN) services. The issue presented here is whether Horizon correctly terminated Petitioner's PDN services under Medicaid regulations.

Here, Petitioner is a nine-year-old who has been diagnosed and treated for the following conditions: chromosome 8p23.1 duplication syndrome, spastic diplegic cerebral palsy, gastroesophageal reflux disease, patent foramen ovale, asthma, gastrostomy in place, and developmental disorder. (P-1.) On October 11, 2023, Horizon notified Petitioner of the termination of PDN services effective October 28, 2023. (R-1.) Petitioner had received PDN services for eight hours a day, five days a week, before the October 2023 termination. ID at 2. Petitioner appealed this termination, and this matter was transmitted to the Office of Administrative Law (OAL). ID at 2. A telephone hearing was conducted on July 22, 2024, and the record was left open until September 9, 2024, for the submission of post-hearing summation briefs. Ibid.

During the hearing, Kimberly Schmidt, Registered Nurse, testified on behalf of Horizon that she conducted a PDN assessment on October 6, 2023, using what she described as a State-approved Tool, nursing notes, the treatment plan of care, and the letter of medical necessity from Petitioner's treating physician. ID at 3. Schmidt's assessment completed in October 2023 did not generate the necessary minimum score of 19 on the PDN assessment tool because the assessment reflected Petitioner no longer needed bowel-incontinence training; required medication administration for two, rather than four, hours; no longer required four hours of activities of daily living (ADL) assistance, communication-deficit management, and oxygen management; and no longer required nebulizer treatment and management more often than every four hours. Ibid. Schmidt used a Tool different from one Horizon used in the previous assessment in April 2020. Ibid.

Schmidt further testified that Petitioner no longer required bowel-incontinence training; they required medication administration every two, rather than every four, hours; they no longer required four hours of activities of daily living (ADL) assistance, communication-deficit management, and oxygen management; and they no longer required nebulizer treatment and management more often than every four hours. (R-7.) Schmidt also testified that the minimum score on the Tool, 19, must be reached before any social consideration in the household makeup can be considered. Ibid.

Neha Patel, licensed practical nurse, who has been Petitioner's clinical case manager since January 2023, testified that due to Petitioner's condition, they have difficulty feeding, developmental delays, a g-tube, and all feeding by mouth has to be monitored. ID at 4. Patel also testified that the g-tube feeding occurred four times daily during fall 2023. Ibid.

S.M., Petitioner's older sister, who is nineteen years old and a student, testified that outside of any of the Bayada workers, S.M. and her family care for Petitioner. ID at 4. S.M. has three siblings in the home: sixteen, fourteen, and eleven. Ibid. S.M.'s parents trained her to feed Petitioner through a G-tube. Ibid. S.M. changes Petitioner's diapers. Ibid. S.M. cares for Petitioner from ten to fifteen hours per week. Ibid. S.M. finally testified that Petitioner had not been hospitalized for any issues with the G-tube in the past year. Ibid.

According to the October 2023 assessment, Petitioner was given credit for the following items: clinical assessment two to three times every four hours; medication administration less often than every 4 hours; enteral nutrition administration of feeding, residual check, adjustment or replacement of tube, assessment and management of complication; gastrostomy tube care; immobilizer management with removal and replacement every 8 hours or more often; aspiration precautions, monitoring, and

management; clinical monitoring and management while attending activities outside of the home environment (e.g., school, therapy); supervision of licensed practical nurse and aide and suctioning (nasal or oral). (R-2.)

The Administrative Law Judge (ALJ) found that Horizon has demonstrated a change in Petitioner's communication assessment, bowel incontinence and bowel and bladder training, medication administration, ADL support needed, communication-deficit management, nebulizer treatment, nurse seizure management, and oxygen management. ID at 7. Additionally, the ALJ found that while Petitioner disputed these changes, they did not offer any evidence or testimony that supports a change in the scoring of any of the categories on the Tool. Ibid. The ALJ also found a lack of testimony regarding what additional skilled nursing care is required on Petitioner's behalf. Ibid. The ALJ concluded that Horizon terminated Petitioner's PDN services appropriately. Ibid.

In their exceptions to the Initial Decision, Petitioner argues that the ALJ did not address at least four of the arguments that Petitioner raised at the hearing as outlined in their post-hearing summation brief. The exceptions argue that Horizon failed to provide any non-hearsay evidence of how they made the decision to terminate PDN services; Horizon violated Petitioner's due process right to confront and cross-examine the person who made the termination decision; Horizon failed to explain why the minimum PDN eligibility score increased from 15 to 19 on the PDN Acuity Tool; and that Horizon failed to consider Petitioner's doctor's clinical recommendation in its decision-making process. Petitioner also states that the ALJ's decision did not correctly describe Patel's testimony and mischaracterized the PDN Acuity Tool as State-approved.

I agree with Petitioner on two critical points. First, the Initial Decision describes the PDN Acuity tool used by Horizon as "the State-approved tool." This is inaccurate; unlike with other service types (e.g. personal care assistance services) DMAHS has not

mandated that Managed Care Organizations (MCOs) use any specific acuity assessment tool when determining whether a member is eligible for PDN. While Horizon is permitted to use such a tool to assist with their assessment of a member's need for services, the fact that a member's score on such a tool is below a given threshold does not in itself demonstrate that the member does not qualify for PDN services. Rather, the MCO must demonstrate that the member does not qualify for services with reference to the underlying medical necessity standard, as articulated in state regulations.

Second, I agree with Petitioner that the Initial Decision fails to adequately explain how the ALJ weighed the testimony of Schmidt and Patel when reaching factual conclusions around whether PDN services were medically necessary. In particular, I have concerns with the following language from the Initial Decision: "[the] petitioner did not offer any evidence or testimony that supports a change in the scoring of any of the categories on the Tool." As noted above, whether the testimony supports a change in the scoring of any categories on the Tool is not the relevant question. Rather, the question is whether the member meets the underlying medical necessity standard for PDN services. To the extent Horizon relies on their tool to justify their determination in this case, it is incumbent upon Horizon to provide detail on how the tool supports accurate decision making, including whether relevant individual circumstances have been appropriately considered. The credibility of the testimony of all witnesses should be considered in this light.

Therefore, upon reviewing the records, I find that the Initial Decision and the OAL file do not have sufficient details to support the decision. In order to settle the record, I am remanding the matter to OAL to (1) further assess whether Horizon's PDN Acuity Tool fully and accurately captures the petitioner's need for services (including assessing apparent changes in the tool between the April 2020 assessment and the October 2023

assessment) and (2) clarify why testimony and /or arguments presented by Petitioner in the hearing as outlined in the post-hearing summation brief were not addressed in the Initial Decision.

THEREFORE, it is on this 23rd day of December 2024,

ORDERED:

That the Initial Decision is hereby REMANDED for clarification of the record in accordance with this decision.

Gregory Woods

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