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

T.D.,

PETITIONER,

v.

AMERIGROUP,

RESPONDENT.

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ADMINISTRATIVE ACTION

ORDER OF REMAND

OAL DKT. No. HMA 01688-2024

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. Petitioner filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is September 19, 2024 in accordance with an Order of Extension.

This matter arises from Amerigroup's decision to reduce Petitioner's Private Duty Nursing (PDN) Services from eight hours per day to zero. After concluding an internal administrative review, Amerigroup upheld its decision to reduce Petitioner's PDN hours to zero based on the December 14, 2023 assessment. The matter was transferred to the Office of Administrative Law (OAL) and a hearing was held on June 7, 2024. The record closed on June 20, 2024 and the OAL issued an Initial Decision on the same day.

Petitioner is thirty-six years of age whose principal diagnosis is Infantile Cerebral Palsy. P-1.¹ Petitioner had been receiving eight hours of PDN services. R-5. As required, Petitioner was reassessed for PDN services on September 22, 2023, December 14, 2023 and May 28, 2024. R-2, R-3, R-6. The September 2023 assessment is the only assessment that included both the PDN Acuity Grid and PDN Psychosocial Grid. Petitioner scored 15.5 for the physical assessment and 18.0 for the psychosocial assessment, which allowed for PDN services in the home. R-2. When Petitioner was reassessed in December 2023 and May 2024, the Psychosocial Grid Tool was not used for the assessment. Without use of the PDN Psychosocial Grid Tool, Petitioner scored 13.5 for the December 2023 assessment and 13.75 for the May 2024 assessment. R-3, R-6. In both the December 2023 and May 2024 reassessments, Petitioner's scores were below the minimum score required for PDN services. N.J.A.C 10:60-5.4.

In reviewing the matter for a new authorization, Amerigroup determined that PDN services were no longer medically necessary. R-4, R-5. In a letter dated January 26, 2024, Amerigroup notes:

Updated records show the member has mild trouble with sleep, loss of bowel and bladder control at time, small seizures (absence type seizures), is watched for choking during eating (aspiration precautions), needs some behavior guidance, and gets a breathing treatment three to four times a day. The member does not need medicines as shots (injections). The member does not need extra help with breathing (apnea monitor). The member does not have seizures that need emergency medication. The member does not need a nurse to take care of his needs any longer. The member is doing well and has needs that parents can take care of on their own. The member's care needs do not meet the guidelines for care (private duty nursing) in the home. R-5.

¹ P1 refers to Petitioner's exhibits.

Based on this assessment, Amerigroup determined that Petitioner did not qualify for PDN services in the home.

Petitioner filed an appeal to the Office of Administrative Law. After review of the evidence and testimony, the Administrative Law Judge (ALJ) affirmed Amerigroup's denial of continued PDN services. The ALJ determined that Petitioner did not meet the conditions required for PDN services because Petitioner "did not exhibit a severity of illness that requires complex skilled nursing interventions on a continuing ongoing basis." See ID at 6. In addition, the ALJ determined there was no proof of medical necessity such as dependence on mechanical ventilation, active tracheostomy, or need for deep suctioning. Ibid. The ALJ further determined that Petitioner does not have a g-tube and no proof was presented to indicate a seizure disorder that would require rescue procedures. Ibid. While the ALJ acknowledged that Petitioner does receive nebulizer treatments with chest PT, the ALJ notes those treatments are not administered around the clock. Ibid. Finally, the ALJ acknowledged that although Petitioner does require assistance with activities of daily living, those needs do not require skilled nursing services and can be met by unskilled aides which are already approved and in place for thirty hours per week with the option to request an increase of those hours, if needed. Ibid. I disagree with the findings in the Initial Decision at this time as the record needs to be further developed to determine why Amerigroup changed the tool they used from one assessment to the next, and Amerigroup needs to clarify what underlying changes occurred in Petitioner's medical condition that justifies the reduction of PDN services. As such, I hereby REVERSE the Initial Decision and REMAND the matter to further develop the evidentiary record.

In their exceptions, Petitioner asserts they rely on PDN services to detect and inform of any conditions that may require medical attention, and argue that having access

to skilled nursing services has allowed Petitioner to remain in the community and with family. More specifically, Petitioner asserts that the PDN Acuity Grids used in December 2023 and May 2024 were not cohesive, consistent or accurate. Petitioner further asserts Petitioner's condition has not changed and that the acuity grid is one sided and subjective. Finally, Petitioner asserts the decision to terminate PDN services is based on "financial obligations to shareholders," and that maintaining coverage has been a challenge "from day one."

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).

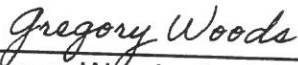
In this case, the record needs to be further developed to determine whether Petitioner's condition meets the requirements for PDN services. However, to make this determination Amerigroup should provide additional information to include: 1) clarification on why the Psychosocial Grid Tool was not used in conducting Petitioner's December 2023 and May 2024 assessments, and 2) provide clarification regarding the change in Petitioner's current medical condition that would justify PDN services being eliminated.

Accordingly, for the reasons set forth above, I hereby REVERSE the Initial Decision, and REMAND the matter to obtain clarification as to why Amerigroup changed the tool used from one assessment to the next, and to clarify what underlying changes existed in Petitioner's medical condition that would justify the reduction of PDN hours.

THEREFORE, it is on this 18th day of SEPTEMBER 2024,

ORDERED:

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



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