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

Y.P.,

PETITIONER,

v.

HORIZON,

RESPONDENT.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 13860-23

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence and the contents of the Office of Administrative Law (OAL) case file. Neither party filed exceptions to the Initial Decision. 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 Horizon's November 20, 2023, reduction of Petitioner's Private Duty Nursing (PDN) services from 16 hours per day, to eight hours per day. Based upon my review of the record, I hereby ADOPT the Initial Decision which reversed Horizon's decision to reduce PDN services.

Petitioner is a 12-year-old child who is diagnosed with Down syndrome and takes food via oral and tube feeding. ID at 2. 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).

PDN 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.

Once medical necessity for PDN services has been established, the following criteria are applied when determining the extent of the need for PDN services and the authorized hours of service:

1. Available primary care provider support
 - a. Determining the level of support should take into account any additional work related or sibling care responsibilities, as well as increased physical or mental demands related to the care of the beneficiary
2. Additional adult care support within the household, and
3. Alternative sources of nursing care

N.J.A.C. 10:60-5.4(c)

Registered Nurse Kimberly Schmidt testified for Horizon. ID at 2. Schmidt completed an assessment of the Petitioner on October 18, 2023, using the State-approved PDN acuity tool. Id. at 3. Information from the nursing notes, the treatment plan of care, and the letter of medical necessity from the Petitioner's treating physicians was entered into the Tool, and the software generated a number that was less than 19, the minimum score needed to meet PDN acuity indication. Id. at 3-4. However, Horizon did not terminate the Petitioner's PDN because they received an overnight feed. Instead, Horizon reduced PDN to eight hours every day. Id. at 4.

After the 2023 assessment, Schmidt received additional information regarding the Petitioner, including a Fiberoptic Bronchoscopy Report, hospital discharge instructions, and a letter of medical necessity dated May 22, 2024. Ibid. The Administrative Law Judge (ALJ) noted that these documents indicated three areas that would result in a change to the Tool, specifically, chest physical therapy two to four times every day, oxygen provided overnight, and issues of self-harm. Ibid. Accordingly, Schmidt,

amended the assessment to account for this information, which resulted in a score of 23.5. Such a score equals to between four and eight hours of PDN. Ibid.

The clinical supervisor for Preferred Home Healthcare (PHH), Amanda Mulderrig, RN, testified on behalf of the Petitioner. She testified that the Petitioner was recently discharged from a hospitalization and the follow-up discharge included "chest PT with inhalers and neb treatments," and new inhaler medications due to a floppy airway which made it difficult to keep his airway clear. Id. at 5. Additionally, Y.P. has had a change in his feeding schedule, over a longer period of time, to help better tolerate the feeding and avoid aspiration. Ibid. Mulderrig testified during the past sixty days the Petitioner had been pulling and fidgeting with his G tube, which required constant attention to avoid him hurting himself. Ibid. In the Initial Decision the ALJ noted that this is supported by the recent letter of medical necessity. In May 2024, the Petitioner's physician ordered oxygen for the Petitioner every night and when napping, or when their blood oxygen level is below 93. Oxygen use requires constant visual supervision. Ibid. Mulderrig testified that based upon these changes, she does not believe that eight hours of PDN is sufficient. Ibid.

Petitioner's mother, A.H., testified that she is a single mother, that there is no other adult in the household, and that she has another child in addition to Petitioner. Ibid. She further testified that she works Monday through Sunday from 8 a.m. to 4 or 5 p.m. every day in the summer, and that she will not be able to work if she does not have more than eight hours of PDN for the Petitioner. Ibid. In fact, she stated that she has lost jobs in the past due to the demands of caring for the Petitioner.

In the Initial Decision, the ALJ found that the Petitioner requires overnight feeding and was very recently ordered, upon discharge from the hospital, to have chest percussion two to four times each day, frequent pulse oximetry monitoring, and supplemental oxygen monitoring, among other recommendations. Id. at 8. Therefore,

the Initial Decision ordered that the decision of Horizon reducing the Petitioner's PDN services from sixteen hours per day, seven days per week to eight hours each day, seven days per week, was reversed. Ibid. I agree with the Initial Decision.

The May 22, 2024, letter of medical necessity clearly sets forth that sixteen hours of PDN is medically necessary. Ibid. The letter also points out that this is required so that the family can sleep and work, as well as to prevent self-harm. Ibid. The record does not contain any evidence that Horizon considered adult care support. Ibid. It is clear that N.J.A.C. 10:60-5.4(c) required Horizon to take into account the mother's work schedule and any sibling care responsibilities when evaluating the amount of support the primary care provider is able to provide. Id. at 9.

Accordingly, for the reasons set forth above and those contained in the Initial Decision, I hereby ADOPT the Initial Decision and FIND that reversing Horizon's decision to reduce Petitioner's PDN hours from services from 16 hours per day, to eight hours per day was appropriate.

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

ORDERED:

That the Initial Decision is hereby ADOPTED.



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