



PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

State of New Jersey
DEPARTMENT OF HUMAN SERVICES
Division of Medical Assistance and Health Services
P.O. Box 712
Trenton, NJ 08625-0712

SARAH ADELMAN
Commissioner

GREGORY WOODS
Assistant Commissioner

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

A.D.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

HORIZON,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 14401-23

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the OAL case file, the documents in evidence, and the Initial Decision in this matter. Neither Party filed exceptions. Procedurally, the time period for the Agency Head to render a Final Agency Decision is March 27, 2025, in accordance with an Order of Extension.

This matter concerns the reduction of Petitioner's private duty nursing (PDN) hours by Horizon. Petitioner had been receiving PDN services for twenty-four hours per day; however, they were reduced to sixteen hours per day after the September 22, 2023 assessment. (R-1.) Petitioner appealed this reduction of PDN hours. ID at 3.

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).

Private duty nursing services shall be limited to a maximum of sixteen hours, including services provided or paid for by other sources, in a twenty-four-hour period per person in MLTSS. There shall be a live-in primary adult caregiver who accepts twenty four-hour per day responsibility for the health and welfare of the beneficiary unless the sole purpose of the private duty nursing is the administration of IV therapy. N.J.A.C. 10:60-5.9(c).

In emergency circumstances, for example, when the sole caregiver has been hospitalized or for brief post-hospital periods while the caregiver adjusts to the new responsibilities of caring for the discharged beneficiary, the MCO or DMAHS may authorize, for a limited time, additional hours beyond the 16-hour limit. N.J.A.C. 10:60-5.9(c)(3).

In this case, Petitioner has medical diagnoses of spinal muscular atrophy (SMA), quadriplegia, chronic respiratory failure with episodes of hypoxia, tracheostomy, gastrostomy, dependence on respirator, and requires continuous respiratory support, monitoring, and intervention. ID at 2. Petitioner receives nebulization therapy four times daily and needs frequent suctioning. Ibid. Petitioner resides with their parents. Ibid.

A letter dated September 5, 2023, from Ronald Rigolosi, MD states, in part, that Petitioner requires PDN services twenty-four-hour day/seven days a week. (R-4.)

On September 22, 2023, Lilian Thomas, RN, conducted a PDN assessment and recommended that Petitioner needs the maximum benefit limit of sixteen hours per day of PDN hours. (R-1.) On November 2, 2023, Horizon notified Petitioner of the reducing of PDN hours from twenty-four to sixteen hours based on Horizon NJ Health Policy 31C.096 PDN. (R-5.)

Petitioner sought an internal appeal; however, on November 30, 2023, Horizon notified Petitioner that their request was reviewed, and the reduction was upheld. (R-6.) On December 9, 2023, Petitioner appealed this reduction. ID at 3. The hearing was held on December 6, 2024. ID at 2.

During the hearing, Petitioner's mother, J.D., testified that due to her health issues, she could not take care of Petitioner. ID at 4. J.D. anticipated that her health issues were temporary, and she wanted Horizon to continue twenty-four-hour care for Petitioner. Ibid. J.D. further testified that Petitioner's father is unable to take care of Petitioner because he has had knee surgery and three back surgeries. Ibid.

The Initial Decision discussed that J.D. testified that she has been experiencing debilitating gastroenterological symptoms since October 2023. Ibid. J.D.'s December 9, 2023 request for a fair hearing states that she would be having surgery on January 10, 2024; however, she did not present any medical evidence to Horizon during the September 2023 assessment. Ibid. The Initial Decision further discussed that even if evidence of emergency circumstances/situation had been presented in 2023, the regulations allow for PDN services to exceed sixteen hours for a "limited" period until other arrangements can be made. However, Petitioner still seeks twenty-four hours of daily PDN services more than a year later. Ibid. It is not reasonable that "limited"

contemplates years or that the emergency circumstances can remain for an unknown duration or be subject to future medical procedures of J.D., especially when the regulation notes that hours above the sixteen-hour maximum are for a limited period “until other arrangements are made for the safety and care of the beneficiary.” Ibid.

The Administrative Law Judge (ALJ) concluded that Horizon’s November 2023 reduction from twenty-four hours to sixteen hours per day based on the sixteen-hours-daily maximum was appropriate. ID at 9.

I concur with the findings of the Initial Decision. J.D. is Petitioner’s primary caregiver. Petitioner is subject to the regulatory proscriptions of N.J.A.C. 10:60-5.9(c), which limited PDN services to a maximum of sixteen hours daily and required the primary caregiver to provide eight hours of care daily. Combined, the regulation ensures a total of twenty-four hours of daily care. During the September 22, 2023 assessment, Horizon determined sixteen PDN hour was appropriate for Petitioner pursuant to N.J.A.C. 10:60-5.9(c). J.D. testified that both she and her husband had health issues; however, J.D. did not provide any documentation regarding her hospitalization, or a medical note for her and her husband at the time of the September 22, 2023 assessment, to request additional PDN hours beyond the 16 hours.

Thus, for the reasons stated above, I find that Horizon’s determination of PDN hours on September 22, 2023, was appropriate and based on the assessment of Petitioner’s needs.

THEREFORE, it is on this 14th day of MARCH 2025,

ORDERED:

That the Initial Decision is hereby ADOPTED.

Gregory Woods

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