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DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

J.B.,

PETITIONER,

v.

HORIZON NEW JERSEY
HEALTH AND DMAHS,

RESPONDENT.

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ADMINISTRATIVE ACTION

ORDER OF REMAND

OAL DKT. No. HMA 04639-2024

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 March 13, 2025, 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 twelve hours per day, seven days per week to eight hours per day, seven days per week. Petitioner filed a request for an internal appeal which was reviewed on February 7, 2024, and March 11, 2024, both of which upheld the decision to reduce Petitioner's PDN services. R-4, R-5. Thereafter, Petitioner chose to pursue an external appeal through Maximus Federal Services, Inc. (Maximus). On April 1, 2024, Maximus upheld Horizon's decision to reduce Petitioner's PDN services. R-6.

At the time of the assessment, Petitioner was thirteen years old. Petitioner has been diagnosed with developmental delay, autism spectrum disorder (ASD), necrotic enteritis of his intestine, anxiety, dysfunction of the eustachian tube, hearing loss, ventricular hemorrhage, mild persistent asthma, congenital heart disease, patent ductus arteriosus, pulmonary vein stenosis, metatarsus adductus, gastrostomy (g-tube), bilateral deafness, static encephalopathy, incontinence, talipes equinovarus and prematurity. R-6. Petitioner had been receiving PDN services twelve hours per day, seven days per week. Ibid. As required, Petitioner was reassessed for PDN services.¹ R-3. Several areas noted within the PDN acuity tool are as follows: 1) clinical assessment 2 to 3 times every 4 hours, 2) communication impaired and self-abusive behavior management with patient at risk of self-harm and preventive intervention needed, 3) medication administration less often than every 4 hours, 4) ambulation deficit, 5) nebulizer treatment and management less than daily but at least once every 7 days, 6) enteral nutrition (pump or bolus) administration of feeding, residual check, adjustment or replacement of tube and assessment and management of complication, 7) gastrostomy tube care, 8) activities of daily living, communication deficit (e.g., visual, auditory, tactile) management 9) immobilizer management with removal and replacement every 8 hours or more often, 10) aspiration precautions, monitoring and management and 11) clinical monitoring and management while attending activities outside the home environment, and 12) supervision of licensed practical nurse or aide. Ibid. Petitioner's total score was 24.5 which according to the PDN Acuity Tool allows for 4 to 8 hours per day of PDN services. Ibid.

¹ The Initial Decision indicates that Petitioner was reassessed for PDN services on February 7, 2024. ID at 2. However, the PDN Acuity Tool provided is undated. R-3.

In reviewing the matter for a new authorization, Horizon determined that twelve hours, seven days per week of PDN services was not medically necessary. R-4, R-5. Horizon issued two denial letters, one dated February 7, 2024, and the other dated March 11, 2024. Ibid. The February 7, 2024 letter notes:

The request for private duty nursing (PDN) services 12 hours per day, 7 days per week is denied. Private duty nursing is for members with extensive skilled needs (i.e. prolonged seizures, vent management, complicated tube feeds, etc.) Your child is not on a breathing machine (ventilator). Your child does not breathe through a hole in the neck (tracheostomy). Your child does not receive oxygen support. Your child needs breathing treatments. Your child receives medications and feeds through a stomach tube (G-tube). Your child is watched for aspiration. You[r] child is approved for 8 hours a day 7 days a week. Seven weeks at 12 hours 7 days are allowed for caregiver transition. This decision is based on Horizon NJ Health Policy 31C.089.01 Private Duty Nursing. R-4.

On March 11, 2024, Horizon further notes:

The request for Private Duty Nursing Services for your child was reviewed again. Your child's provider sent more information. It is still denied. Your child's doctor asked for 12 hours per day, 7 days per week of this service. Private duty nursing is for members with extensive skilled needs, (for example prolonged seizures, vent management, complicated tube feeds, etc). Your child had an assessment by a nurse. The policy says that your child's nursing hours are determined by scoring of this assessment. Your child qualifies for 8 hours per day, 7 days per week of private duty nursing. Your child has already been approved for this number of hours. R-5.

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

Following the determination by Horizon's internal review, Petitioner filed an appeal for an external review by an independent utilization review organization (IURO). The IURO reviewer noted that Petitioner has a history of autism, developmental delay, g-tube

and gastroesophageal reflux disease and is at risk for aspiration. R-6. The reviewer also notes that Petitioner's condition is stable, and that Petitioner has had no recent hospitalizations or decline in baseline. Ibid. The reviewer further notes that Petitioner does not have active respiratory failure or reliance on mechanical ventilation and that there is no evidence that the requested hours of nursing services would prevent illness, injury or change Petitioner's health condition or outcome. Ibid. Finally, the reviewer notes that a trained caregiver can manage Petitioner's care when a PDN is not present, that eight hours per day, seven days per week is sufficient for Petitioner's needs and that PDN services should not serve as a substitution for parenting tasks. Ibid.

Petitioner filed an appeal with the Office of Administrative Law. After reviewing the evidence and testimony, the Administrative Law Judge (ALJ) upheld Horizon's decision to reduce Petitioner's PDN services to eight hours a day, seven days a week. ID at 4. The ALJ determined that the required skilled nursing interventions needed could be completed without issue during the eight hours authorized. Ibid. The ALJ also determined that Petitioner's needs fall within "the category of routine parenting, which is not countable under N.J.A.C. 10:60-5.4(f), or they are addressed by the PCA hours, which are not considered in determining PDN hours." Ibid. The ALJ further determined that Petitioner's clinical needs were assessed with reliable information, and notes that since "new information regarding Petitioner's needs came to light during the proceeding," Petitioner should be reassessed as soon as possible. Ibid.

I disagree with the findings in the Initial Decision at this time, as the record needs to be further developed. In particular, I am concerned by the following paragraph from the Initial Decision:

Parenthetically, on September 26, 2024, A.B. provided Horizon NJ Health (Horizon) an Individualized Education Program (in

effect May 2024), a Functional Behavioral Assessment (dated February 2024), and a home physical therapy exercise plan (dated August 2024). (P-1; P-2; P-3; P-4.) These documents, however, were not made known to Horizon at the time of the assessment. The Individualized Education Program indicates that a toilet training plan was in place and that the skilled nurse during school hours facilitated that toilet training plan, but Nurse D'Agostino failed to document it. (P-4.) As a result, Nurse D'Agostino did not award points on the PDN acuity tool for the toilet training program, or for physical therapy or occupational therapy either. Since no interventions were documented by the servicing skilled nurse, Nurse D'Agostino was not able to credit those categories in the PDN tool. There are also some errors in the nursing notes. For example, the nursing notes document that care was given at school on days when school was not in session. (R-2.)

It is unclear from the Initial Decision why the ALJ considered this information not to be relevant to the outcome of this case. Key factual questions that this paragraph raises (but does not answer) include: whether the Functional Behavioral Assessment, the home physical therapy exercise plan, and the Individualized Education Program include relevant information about the Petitioner's condition and service need at the time that Horizon assessed them for PDN services, or whether these documents were developed in response to subsequent clinical developments; whether Nurse D'Agostino's omission of toilet training, physical therapy, or occupational therapy from the PDN acuity tool was appropriate; whether the errors in the nursing notes meaningfully affected the accuracy of Horizon's assessment; and if relevant and timely information from any source was not considered, whether this information should have affected the ultimate outcome of Horizon's assessment. In considering these questions, it is important to note that neither the possible failure of a servicing skilled nurse to properly document services provided to the Petitioner nor Nurse D'Agostino's possible failure to consider all of the Petitioner's clinical needs may be held against the Petitioner. The key question the ALJ must answer is whether the totality of the record supports the accuracy of Horizon's assessment of

Petitioner's need for PDN services. To the extent the factors mentioned in the above paragraph are relevant to this question, they should be considered.

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 Horizon was correct to reduce Petitioner's PDN services. To make this determination Horizon should provide additional information to include: 1) Petitioner's demonstrated need for PDN based on an assessment that includes consideration of all relevant information and documentation which pertain to Petitioner's medical condition at the time of assessment and 2) provide clarification regarding the change in Petitioner's medical condition at the time of assessment that justifies a reduction in PDN services relative to previous assessments.

Accordingly, for the reasons set forth above, I hereby REVERSE the Initial Decision and REMAND the matter to further develop the record in accordance with the above requests.

THEREFORE, it is on this 12th day of MARCH 2025,

ORDERED:

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

Gregory Woods

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