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

M.M.

PETITIONER,

v.

HORIZON NJ HEALTH AND DIVISION

OF MEDICAL ASSISTANCE AND

HEALTH SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

ORDER OF REMAND

OAL DKT. NO. HMA 13336-23

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. The Respondent filed Exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is July 28, 2025, in accordance with an Order of Extension.

This matter arises from Horizon NJ Health's (Horizon) decision to terminate the Petitioner's Private Duty Nursing (PDN) Services from eight hours per day, seven days per week to zero hours. Petitioner appealed the termination, and the matter was transmitted to the OAL for a hearing.

The regulations state that the purpose of PDN services is to provide "individual and continuous nursing care, as different from part-time intermittent care, to beneficiaries who exhibit a severity of illnesses that require complex skilled nursing interventions on a continuous ongoing basis." N.J.A.C. 10:60-5.1(b). 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). 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). Further, N.J.A.C. 10:60-5.4(b) sets forth the criteria to be met in order to receive PDN services:

(b) Medical necessity for EPSDT/PDN services shall be based upon, but may not be limited to, the following criteria in (b)1 or 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.

Additionally, 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).

The Petitioner is twenty years old and suffers from a seizure disorder. ID at 1. They were born with a smaller, underdeveloped brain, which results in them acting and behaving much younger than their actual age. Id. at 2. The Petitioner takes several prescribed medications to both prevent and maintain their condition, before, during and after an attack, in order to limit the impact of the seizures, clear their mouth and throat after one, and oversee their physical condition from the time they wake up to the time they go to sleep. Ibid. In addition to administering the multiple medications, a nurse makes sure that the Petitioner eats and swallows properly, and helps with using the bathroom and several other basic living tasks. Ibid.

At the Fair Hearing, Horizon argued that the Petitioner is no longer eligible for nursing services under a scoring tool used by a third-party vendor that requires at least nineteen points for a favorable determination. ID at 7. In the Initial Decision, the Administrative Law Judge (ALJ), found that in order to terminate the Petitioner's 8 hours of PDN services a day, Horizon performed an assessment by using a State mandated Nursing Assessment Tool, which has several categories with numbers but does not analyze or provide an explanation of scoring when a disabled person is deemed unqualified. Id. at 7. Horizon simply performed the assessment and terminated the Petitioner stating, "you are not eligible, and your services are hereby terminated." Ibid. They do not provide the actual category scores nor do they explain and identify why a person has not reached the minimum score required for services. Ibid. The ALJ found that because the Petitioner does not know the acuity score they received that led to the termination of PDN care, they are unable to present any evidence to challenge the score's

accuracy, and/or cross-examine the third party and/or Horizon officials as to the reliability of the score. Ibid. As such, the ALJ concluded that the Petitioner was entitled to a written notice with a detailed explanation of why their benefits were being terminated, and the lack of a detailed explanation, including the acuity tool score, violated the Petitioner's fundamental due process rights. Ibid. The ALJ also concluded that Horizon failed to consider the Petitioner's family situation, as it is obligated to do under N.O. v. Horizon, HMA 01789-24 Div. of Medicaid Assistance and Health Services decision (Aug. 20, 2024), which stands for the proposition that the acuity tool alone is not sufficient to complete a statutory and regulatory analysis.

In their exceptions, Horizon argued that while the acuity tool assists Horizon decision makers in coming to a determination on medical necessity, medical necessity is ultimately determined by Horizon Policy and the New Jersey Regulations. Respondent Exceptions at 1. In the termination letter Horizon states that PDN services are for members with extensive skilled needs and, while Petitioner has a seizure disorder and requires hands on assistance with basic activities of daily living, Petitioner's needs do not require a licensed nurse and can be provided by a trained caregiver. Ibid. Horizon argues that this decision was made based on Horizon NJ Health Policy 31 C.096 Private Duty Nursing, not merely based on the acuity tool alone, as the ALJ suggests. Ibid. Horizon also argues that according to N.J.A.C. 10:60-5.4, patient observation, monitoring, recording, or assessment and seizure disorders controlled with medication and/or seizure disorders manifested by frequent minor seizures not occurring in clusters or associated with status epilepticus, shall not, in and of themselves, constitute a need for Private Duty Nursing services. Id. at 2. Finally Horizon argues that in regard to taking social factors into consideration, 10:60-5.4(c) states that situational criteria can only be used to determine the extent of the need for PDN services, and the authorized hours of service,

once medical necessity has been established in accordance with subsection (b), and that in this case medical necessity has not been established, and thus situational criteria cannot be taken into consideration. Ibid.

Here, the ALJ places great emphasis on the fact that the PDN Acuity Tool was the only consideration used in determining that PDN services were not medically necessary for the Petitioner. I agree that a given score on the PDN Acuity Tool is, in itself, an insufficient basis for making such a medical necessity determination. It is important to note that the PDN Acuity Tool used by Horizon appears nowhere in state regulations and is neither mandated nor endorsed by DMAHS. 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 or does not qualify for any specific amount of PDN services. Rather, eligibility for PDN services should be determined according to the underlying medical necessity standard, as articulated in state regulations.

That said, I disagree with the ALJ's finding that the PDN Acuity Tool was the only consideration supporting Horizon's determination that PDN services were not medically necessary. The evidentiary record suggests that Horizon's decision was not based solely on the PDN Acuity Tool. In particular, the explanation for the termination in the termination letter does not reference the PDN Acuity Tool at all, but rather directly discusses the petitioner's clinical needs. (R-10).

I find that the record in this case is not sufficient to reach a conclusion about the appropriateness of Horizon's determination. While I do not agree with the ALJ's finding that this determination was based solely on the PDN Acuity Tool, I am nonetheless concerned about Horizon's lack of explanation about how the member's clinical status has changed since his previous assessment, such that PDN services are no longer

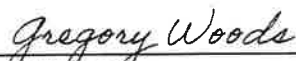
medically necessary. As such, the record needs to be further developed to determine whether Petitioner's condition meets the requirements for PDN services. To support this determination Horizon should provide additional information to include: 1) a detailed explanation of the Petitioner's last PDN assessment, 2) clarification regarding the change in Petitioner's current medical condition that would justify PDN services being eliminated and 3) a determination on the level of risk involved with Petitioner's seizure precautions identified in Petitioner's PDN Acuity assessment.

Accordingly, for the reasons set forth above, I hereby REVERSE the Initial Decision, and REMAND the matter to further develop the record and to directly assess the question of whether the Petitioner meets the underlying regulatory medical necessity standard in accordance with the above requests.

THEREFORE, it is on this 25th day of July 2025,

ORDERED:

That the Initial Decision is hereby REVERSED AND REMANDED, as set forth herein.



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