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DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

R.T.,	:	
PETITIONER,	:	**ADMINISTRATIVE ACTION**
v.	:	**ORDER OF REMAND**
UNITED HEALTHCARE,	:	
RESPONDENT.	:	**OAL DKT. No. HMA 01720-25**

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. Respondent filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is September 25, 2025, in accordance with an Order of Extension.

This matter concerns the termination of Petitioner's Private Duty Nursing (PDN) hours by United Healthcare (United). Petitioner has been diagnosed with Type 1 diabetes mellitus with ketoacidosis and acute respiratory distress. R-4. By letter dated December 17, 2024, Petitioner was notified that PDN services were being terminated as not being medically necessary. R-5. Petitioner appealed the termination of PDN hours, and a fair hearing took place on April 11, 2025. ID at 2.

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).

During the fair hearing, Dr. Terralon Knight (Dr. Knight) testified for United.[1] ID at 3. Dr. Knight testified that the decision to terminate Petitioner's PDN services was based on Petitioner's medical condition and history, PDN assessments, lack of acuity scores in 2022 and 2024, medical reports to include nursing notes, an internal appeal and an external appeal conducted by Maximus. Ibid. Dr. Knight explained that although Petitioner is insulin dependent, monitoring of an insulin pump or G6 is not supported by the regulations. ID at 4. Dr. Knight further explained that Petitioner is stable, does not have a need for deep suctioning or gastrostomy feeding tube and does not depend on tracheostomy or ventilations. Ibid. Dr. Knight referred to the IURO and explained that Dr. Ian Maitin (Maitin) noted that "insulin dependent diabetes is not a diagnosis that *typically* warrants provision of shift PDN [emphasis added]," and that United's decision should be upheld. Ibid.

In addition, registered nurse Imani Robinson (Nurse Robinson) also testified for United. ID at 4. Nurse Robinson performed the assessment on September 16, 2024,

[1] There is a discrepancy with regard to Dr. Knight's first name. According to the Initial Decision, Dr. Knight's first name is Carolyn. ID at 3. Yet, the nursing notes in Petitioner's exceptions reflect Dr. Knight's first name as Terralon. See Petitioner's Exceptions at E6.

and testified that Petitioner does not qualify under the PDN tool because Petitioner's acuity score was zero. ID at 3,4.

Narzen Pavelonia RN (Nurse Pavelonia) testified for the Petitioner. ID at 2. Nurse Pavelonia testified that Petitioner requires a skilled nurse to monitor and manage her blood sugar level and insulin before and after meals. Ibid. Nurse Pavelonia also testified that her role is to monitor Petitioner's glucose levels and ensure the Dexcom G6 functions correctly with the insulin pump.[2] ID at 3,4. During cross examination, Nurse Pavelonia admitted that she was not familiar with the regulations or criteria needed to qualify for PDN services. ID at 3. When presented with the criteria needed for PDN services, Nurse Pavelonia agreed Petitioner did not meet that criteria. Ibid.

Petitioner's mother, D.O., testified that many things could go wrong if someone is not keeping an eye on Petitioner's blood-sugar level. Ibid. She testified that Petitioner attends preschool and private daycare from 7:00 a.m. to 4:00 p.m. while she works. Ibid. D.O. testified that the daycare is private, not affiliated with the school district and has no nurses or medical personnel on staff. Ibid.

Included in the evidence provided by Petitioner was a letter from Diane Difazio, Advanced Nurse Practitioner (Difazio), who is the nurse overseeing Petitioner's care for Type 1 diabetes. (P-1). The letter explains that Petitioner is medically fragile and unable to self-manage her diabetes due to her age. Ibid. The letter also explains that Petitioner is at high risk for hypoglycemia unawareness and is unable to verbally communicate any signs of low blood sugar. Ibid. In addition, the letter specifies that without appropriate medical intervention, Petitioner is at risk for severe hypoglycemia, loss of consciousness, seizure, irreversible neurologic damage or death. Ibid. Difazio explained that Petitioner's

[2] Dexcom G6 is a glucose monitoring automated system. ID at 2.

daycare has stated they are unwilling to assist with Petitioner's diabetes management because of liability concerns. Ibid. Finally, Difazio was explicit that Petitioner's life is at risk without a nurse being physically present and that the need for a nurse is based on clinical necessity which aligns with the standards for pediatric Type 1 diabetes for a child of Petitioner's age. Ibid.

In the Initial Decision, the Administrative Law Judge (ALJ) notes that United maintains because Petitioner "does not require a ventilator, does not have an active tracheostomy, does not need deep suctioning, or a nebulizer and does not suffer from a seizure disorder or aspiration issues, she does not meet the requirement of United for PDN." ID at 7. However, the ALJ found it troubling that United had previously approved PDN services and now maintains that Petitioner fails to meet the definition of medical necessity. Ibid. The ALJ also found that United has failed to explain how a four-year-old child could monitor her blood sugar levels or respond to an alarm or any other medical issue that may arise from her condition. Ibid. As a result, the ALJ concludes that United's denial of PDN services was not appropriate. ID at 8. Lastly, the ALJ concludes that PDN services do not need to be provided by a PDN but should continue until Petitioner reaches the age of six and demonstrates an awareness to monitor her condition or is enrolled in a daycare or school where a nurse is present. Ibid.

I disagree with the findings in the Initial Decision at this time, as the record needs to be further developed. As to the first issue, I am concerned by the following paragraph, provided in part, of the Initial Decision:

> However, I conclude that these services may be provided by an individual, regardless of certification or license, that is qualified to provide such services.
>
> I further conclude that such monitoring services shall continue until one of the following occur:

1. The child is enrolled and attends a daycare or public school where a nurse is present, or an individual is qualified to administer services related to child's condition.
2. The child attains the age of six and demonstrates the perspicacity and situational awareness to self-monitor for her condition.

While we share the ALJ's concerns about the wellbeing of the Petitioner, and agree with the ALJ that it is critical that some accommodation be made to meet her needs before existing services are discontinued, to qualify for PDN services Petitioner nonetheless must meet the regulatory definition of medical necessity. Here, the ALJ should clarify his ruling on the issue of medical necessity.

The second issue which needs further development is that United should provide clarification as to how Petitioner's condition has changed since previously being found to meet the requirements for PDN services. The review of the medical records only indicates that "[Petitioner] has improved and is more independent." R-5. This description is vague and lacks any specifics regarding a change to Petitioner's current medical condition. As such, additional information is needed before a decision is reached in this matter. Note that if United's position is that the previous determination that the Petitioner was eligible for PDN services was incorrect, that should be stated explicitly.

In exceptions, counsel for Respondent argues the following: 1) the Initial Decision is confusing and not based on legal support or precedent, 2) the Initial Decision forces the Respondent to continue PDN services after acknowledging that PDN services are not medically necessary and can be performed by a non-skilled person, and 3) that Petitioner was assessed correctly, and it was determined that she did not meet the criteria. In this case, the record needs to be further clarified before considering Respondent's arguments on points one and two. As to the third point regarding the acuity assessment performed

on September 16, 2024, by Nurse Robinson, Petitioner scored zero and it was determined that Petitioner did not meet the criteria for PDN services with a score of zero. ID at 4, 5. It is important to note that the PDN Acuity Tool used by United appears nowhere in state regulations and is neither mandated nor endorsed by DMAHS. While United 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 not qualify for PDN services. Rather, the MCO must demonstrate that the member does not qualify for services with reference to the underlying medical necessity standard, as articulated in state regulations. As such, the record should be clarified on remand to specifically focus on whether the Petitioner meets the underlying medical necessity standard. With respect to this question, the PDN acuity tool score is not dispositive.

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. In addition, Petitioner and Respondent are strongly encouraged to consider whether an alternative resolution may be possible, which would both satisfactorily address the wellbeing and safety of the Petitioner, while taking into consideration the Respondent's concerns about the ongoing clinical appropriateness of PDN.

THEREFORE, it is on this **25th** day of September 2025,

ORDERED:

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

Gregory Woods

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