



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

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES**

T.D.,

PETITIONER,

v.

WELLPOINT,

RESPONDENT.

:
:
:
:
:
:
:
:
:
:

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

**OAL DKT. No. HMA 15732-2024
(ON REMAND HMA 01688-2024)**

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. Petitioner filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is April 17, 2025, in accordance with an Order of Extension.

This matter arises from Wellpoint's (formerly "Amerigroup") decision to reduce Petitioner's Private Duty Nursing (PDN) Services from eight hours per day to zero. Based on my review of the record, I hereby ADOPT the findings and conclusion of the Administrative Law Judge (ALJ) as specified herein.

By way of background, Petitioner is a thirty-six-year-old male whose principal diagnosis is hemiplegic infantile cerebral palsy. ID at 1. Petitioner had been receiving PDN services his entire adult life. ID at 5. As required, Petitioner was reassessed for PDN services on September 22, 2023, December 14, 2023, and May 28, 2024. See Initial Decision, dated June 20, 2024 ("Initial Decision 2024") at R-2, R-3, R-6. The

September 2023 assessment is the only assessment that included both the PDN Acuity Grid and PDN Psychosocial Grid. Petitioner scored 15.5 for the physical assessment and 18.0 for the psychosocial assessment, which allowed for PDN services in the home. Initial Decision 2024 at R-2. When Petitioner was reassessed in December 2023 and May 2024, the Psychosocial Grid Tool was not used for the assessment. Without use of the PDN Psychosocial Grid Tool, Petitioner scored 13.5 for the December 2023 assessment and 13.75 for the May 2024 assessment. Initial Decision 2024 at R-3, R-6. In both the December 2023 and May 2024 reassessments, Petitioner's scores were below the minimum score required for PDN services. N.J.A.C 10:60-5.4. In January 2024, Petitioner was informed that PDN services were not medically necessary. Initial Decision 2024 R-5. The matter was appealed to the Office of Administrative Law and a hearing was held.

On June 20, 2024, an Initial Decision was issued wherein the Administrative Law Judge (ALJ) dismissed Petitioner's appeal and affirmed the reduction of PDN services. ID at 2. The ALJ notes this decision was reached based on the testimony and evidence presented at the hearing. Ibid.

For further review, the undersigned issued an Order of Remand on September 18, 2024, which reversed the Initial Decision and remanded the matter to further develop the record. More specifically, the Order of Remand sought to obtain clarification as to why Wellpoint changed the tool used from one assessment to the next, and to clarify what underlying changes existed in Petitioner's medical condition that would justify the reduction of PDN services.

On remand, the ALJ heard additional testimony and reviewed supplementary documentary evidence provided by Wellpoint and Petitioner. Ibid. Wellpoint's only witness, Janine Pezzino, R.N. ("Nurse Pezzino") testified that Petitioner's reassessment

on November 11, 2024, supports [Wellpoint's] "determination following the December 2023 assessment that [Petitioner] does not need a nurse to take care of his needs any longer." ID at 4. Nurse Pezzino reiterated that because Petitioner's nebulizer treatments with chest PT were not administered around the clock, those treatments alone would not support a finding of medical necessity to justify PDN services. Ibid. On cross examination, Nurse Pezzino admitted that "she erred when completing the acuity tool." Ibid. More specifically, Nurse Pezzino acknowledged that Petitioner should have received an additional 1.5 points under the category "Humidification" and another .5 points for Occasional Reflux. Ibid. Petitioner's mother, L.D., testified that Petitioner "remains incontinent of bowel and bladder." Ibid. This category was also not properly scored in the assessment. Ibid. Here, the ALJ determined that if Wellpoint had correctly assessed Petitioner in December 2023 by using the same tool which authorized PDN services, Petitioner would have scored 28 points which allows for continued PDN services. ID at 5. The ALJ also notes that Wellpoint "claimed for the first time during the remanded proceedings that it was under the mistaken impression that [Petitioner] previously had been receiving around-the-clock nebulizer treatments and that it would have terminated his life-long PDN services prior to the December 2023 reassessment but for the continuation of the State's public health emergency due to COVID-19." Ibid. Despite this new assertion, the ALJ finds that Wellpoint has failed to meet its burden to establish that PDN services for Petitioner are not medically necessary and that Wellpoint has failed to present any evidence that shows a change or improvement in Petitioner's chronic medical condition to support this claim. ID at 5, 6.

I agree with the findings of the ALJ. Petitioner's medical condition was not reviewed in totality. Wellpoint concedes that errors were made when Petitioner was reassessed in December 2023 and November 2024. Petitioner should have received

points in the acuity tool for medical issues relevant to the categories entitled humidifier, reflux and incontinence. In addition, even if the new acuity tool had been used properly, Petitioner would have exceeded the minimum to qualify for PDN services. ID at 5. Wellpoint now argues that despite the December 2023 and November 2024 assessment being completed incorrectly and despite Petitioner's score exceeding the threshold for PDN services, the acuity tool "should not be used to determine the propriety of its determination to discontinue PDN services to [Petitioner]." Ibid. Yet, Wellpoint relied on the Petitioner's acuity scores to deem him eligible for PDN services that he has been receiving his entire adult life. Ibid. While use of the acuity tool is permissible to assist with assessing 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 detailed below.

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).

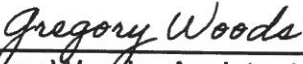
In their exceptions, Petitioner asserts Wellpoint reported certain areas within the "grid" that were inaccurate, and that Wellpoint was not concerned with Petitioner's best interest. Petitioner is correct to the extent that Wellpoint failed to consider the entirety of Petitioner's medical condition.

Accordingly, for the reasons set forth above and those contained in the Initial Decision, I hereby ADOPT the Initial Decision and FIND that Wellpoint's denial of PDN services was inappropriate based on these set of facts. In addition, Petitioner should be reassessed with an accurate review of his medical condition to determine if PDN services continue to be warranted.

THEREFORE, it is on this 15th day of APRIL 2025,

ORDERED:

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



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