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

X.T.,

PETITIONER,

v.

HORIZON NEW JERSEY  
HEALTH AND DMAHS,

RESPONDENT.

**ADMINISTRATIVE ACTION**

**ORDER OF REMAND**

**OAL DKT. No. HMA 04749-2024**

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 January 9, 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 ten hours per day, seven days per week to zero effective February 29, 2024. Petitioner filed a request for an internal appeal which was reviewed on February 12, 2024, and March 11, 2024, both of which upheld the decision to deny private duty nursing services. R-2, R-3. Thereafter, Petitioner chose to pursue an external appeal through Maximus Federal Services, Inc. (Maximus). On March 26, 2024, Maximus upheld Horizon's decision to deny PDN services. R-4.

At the time of the assessment, Petitioner was six months old. Petitioner has a principal diagnosis of prematurity, bronchopulmonary dysplasia, oral aversion, constipation, anemia of prematurity and reflux. Ibid. Petitioner had been receiving PDN services ten hours per day, seven days per week. Ibid. As required, Petitioner was reassessed for PDN services on February 12, 2024. R-1. Several areas noted within the PDN acuity tool are as follows: 1) skilled clinical assessment once every 4 hours, 2) medication administration less often than every 4 hours, 3) enteral nutrition (pump or bolus) administration of feeding, residual check adjustment or replacement of tube, and assessment and management of complication, 4) nasogastric tube care, 5) activities of daily living (ADL) support needed for more than 4 hours per day to maximize a patient's independence, 6) aspiration precautions, monitoring and management and 7) supervision of licensed practical nurse or aide. Petitioner's total score was not provided, but the PDN Acuity Tool did note "a score of 19 is needed to meet private duty nursing acuity indication." Ibid.

In reviewing the matter for a new authorization, Horizon determined that PDN services were no longer medically necessary. R-2, R-3. Horizon issued two denial letters, one dated February 12, 2024 and the other dated March 11, 2024. Ibid. The February 12, 2024 letter notes:

The request for private duty nursing (PDN) services 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 his neck (tracheostomy). He does not receive oxygen support. Your child does not require chest physical therapy or suctioning. He does not require monitoring for seizures. Your child receives medications and feeds through a tube in the nose (nasogastric tube). He requires aspiration (breathing in food or drink) precautions. Based on this information, your child does not have any skilled needs. Four weeks at 10 hours/7days are

allowed for caregiver transition. This decision is based on Horizon NJ Health Policy 31C.096 Private Duty Nursing. R-2.

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 10 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 does not meet [the criteria] for private duty nursing based on this assessment. R-3.

Based on this review, Horizon determined that Petitioner did not qualify for PDN services in the home.

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 notes the following: 1) Petitioner has bronchopulmonary dysplasia, a nasogastric tube and was born prematurely at 28 weeks' gestational age, 2) Petitioner is noted to be stable from a respiratory, cardiac and neurologic perspective, and 3) Petitioner does not have an oxygen requirement, tracheostomy or mechanical ventilator. R-4. The reviewer explained that Petitioner receives two medications by enteral route twice a day, one medication daily, receives a combination or oral feeding of breast milk and nasogastric tube feeding. Ibid. The reviewer further explained that the home health tool used to determine skilled nursing needs does not indicate a need for private duty nursing, and that Petitioner's needs can be met by trained caregivers. Ibid. Lastly, the reviewer notes both parents work outside the home, and further notes that "parental work outside of the home is not an indication for private duty nursing as private duty nursing is meant to augment [ ] not replace parental caregivers." Ibid.

Petitioner filed an appeal to the Office of Administrative Law. After review of the evidence and testimony, the Administrative Law Judge (ALJ) affirmed Horizon's denial of continued PDN services. ID at 14. The ALJ determined that Petitioner's condition had improved, but that weight gain and vomiting remained issues.<sup>1</sup> ID at 13. The ALJ also determined that Petitioner "is not on mechanical ventilation, does not have a tracheostomy, does not have a need for deep suctioning, does not currently receive around the clock nebulizer treatments with chest physiotherapy, does not require routine blood draws, infusions, or intravenous care, and does not require skilled wound care." Ibid. The ALJ further determined that the evidence does not demonstrate a need for PDN services, Petitioner's care needs can be maintained by trained caregivers and that Horizon's decision to deny PDN services was appropriate. Ibid.

I disagree with the findings in the Initial Decision at this time, as the record needs to be further developed. First, further clarification is needed to determine Petitioner's PDN Acuity score, since none was provided. The Initial Decision indicates that C.D.A., Horizon's Utilization Management Reviewer testified Petitioner scored 19 on the assessment. Yet, this information differs from what is reflected on the actual assessment which fails to set forth Petitioner's score and only indicates "a score of 19 is needed to meet private duty nursing acuity indication." Second, further review is required to determine what changed in Petitioner's medical condition that would warrant the reduction of PDN hours since C.D.A. did not have Petitioner's previous PDN Acuity assessment to make a comparison regarding Petitioner's current medical status.<sup>2</sup> ID at 4. Third,

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<sup>1</sup> Based on the ALJ's independent review, the Initial Decision notes that C.D.A testified to Petitioner having three episodes of vomiting rather than the ten set forth in the nursing notes for the period of January 29, 2024 through February 6, 2024. ID at 13.

<sup>2</sup> Petitioner was transferred to Horizon from another managed care organization. ID at 4. Hence, any prior assessment was not reviewed or considered when the February 2024 PDN assessment was performed. Ibid.

clarification is needed to determine the level of risk identified as aspiration precautions in Petitioner's PDN assessment based on Petitioner's current medical condition.

Beyond these specific gaps in the record that must be addressed, the initial decision lacks a sufficient analysis to demonstrate that the medical necessity criteria for PDN services has not been met. 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 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, which are described in greater detail below. In this case, the initial decision describes testimony from the Respondent that appears to treat a certain score on the PDN Acuity Tool as in itself synonymous with a lack of medical necessity. Moreover, neither the Respondent's testimony nor the conclusions of the initial decision provides any specific rationale as to why the petitioner's ongoing clinical needs do not meet the medical necessity threshold.

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 Petitioner's condition meets the requirements for PDN services. However, to make this determination Horizon should provide additional information to include: 1) Petitioner's PDN Acuity score based on the February 2024 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 aspiration precautions identified in Petitioner's PDN Acuity assessment. In addition, the question of whether the Petitioner meets the underlying regulatory medical necessity standard must be more directly addressed, independent of the Petitioner's ultimate score on the 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 7th day of JANUARY 2025,

ORDERED:

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

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