

Petitioner is a ten-year old child whose principal diagnoses are trisomy 13, other specified congenital malformation of the nervous system, developmental disorder of scholastic skills, gastroesophageal reflux disease (GERD), and abnormalities of breathing. R-3. On August 18, 2023, United Healthcare denied Petitioner's request for PDN services effective August 8, 2023. R-2. An independent external review was conducted by Maximus, and on August 28, 2023, it was recommended that United Healthcare's denial of PDN services should be upheld. R-3.

In reviewing the matter for authorization, United Healthcare determined that the clinical records showed that Petitioner did not meet the criteria for PDN services. Specifically, United Healthcare's Medical Director, David Sorrentino, M.D. assessed Petitioner's medical condition and noted the following: 1) Petitioner has a history of dysphagia and is developmentally delayed, 2) Petitioner has not needed supplemental oxygen and no respiratory support has been ordered, 3) Petitioner can breathe on her own, 4) takes feedings by mouth and has advanced to thin liquids and 5) has seizures which have been infrequent, and has not needed rescue medication. R-5. Based on these facts, United Healthcare denied Petitioner's request for continued PDN services.

At the outset, I note that the Administrative Law Judge (ALJ) made credibility determinations related to the testimony of Dr. Sorrentino and Y.F., Petitioner's father. The ALJ gave greater weight to Dr. Sorrentino who testified for Respondent. The ALJ determined that Dr. Sorrentino was knowledgeable about New Jersey regulations regarding PDN services and found him to be a credible witness. With regard to Y.F.'s testimony, the ALJ determined that Y.F. was neither a medical doctor or medical expert and, therefore could not give much weight to his lay testimony.

With regard to receipt of PDN services, the ALJ determined that no medical

necessity was shown such as dependence on mechanical ventilation, no active tracheostomy and although Petitioner did require oxygen, this treatment did not require skilled nursing. The ALJ also determined that Petitioner did not require a feeding tube, and that Petitioner's seizures were infrequent and no rescue medication was required. Lastly, the ALJ determined that based on Petitioner's clinical records, PDN services were not required and Petitioner's needs could be met by unskilled aids. I agree. Petitioner's medical records concerning PDN services do not demonstrate the need for skilled nursing. The evidence shows that Petitioner has not needed supplemental oxygen and no respiratory support has been ordered, can breathe on her own, takes feedings by mouth and has advanced to thin liquids, seizures have been infrequent and Petitioner has not needed rescue medication. R-6, R-7.

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 does not contain any evidence that Petitioner's condition meets the requirements for PDN services. Specifically, Petitioner does not have a dependence on mechanical ventilation, an active tracheostomy, or the need for deep suctioning, chest physiotherapy or tube feedings. R-6. Although Petitioner does have a seizure disorder, the seizures are not prolonged and do not require emergency administration of anti-convulsants. See N.J.A.C. 10:60-5.4(b)(2) (iii). The clinical notes show the following regarding Petitioner's medical condition: 1) vital signs have been normal, 2) Petitioner has not required supplemental oxygenation, nebulizer treatments or suctioning and 3) Petitioner has not had any seizure activity requiring intervention. Ibid. According to the functional assessment tool PDN Acuity Tool "MCG Care Guidelines Private Duty Nursing, PDN-2001 (HC) PDN Acuity Tool", a score of 19 is needed to meet PDN Acuity indication. Ibid. Petitioner's score was less than 19 "per rounds assessment on May 22, 2023." Petitioner, thus, does not require complex, ongoing interventions by a licensed nurse, and therefore, she does not meet the eligibility requirements for PDN services.

Since medical necessity for PDN services has not been established, Petitioner's parental work schedule is not relevant. N.J.A.C. 10:60-5.4(c)(1) (stating that available primary care provider support, additional adult care support within the household, and alternative sources of nursing care shall be considered in determining the extent of the need for PDN services and authorized hours of service only after medical necessity, as set forth in N.J.A.C. 10:60-5.4(b), has first been established). Because United Healthcare found PDN services were not medically necessary in this matter, a consideration of Petitioner's family situation was not appropriate.

Based upon the record and the testimony in this matter, it appears that Petitioner is in need of observation, supervision, and monitoring. However, the regulations clearly

state that PDN services are not available for observation, monitoring, or assessment. See N.J.A.C. 10:60-5.4(d). PDN services cannot be used purely for monitoring in the absence of a qualifying medical need. See N.J.A.C 10:60-5.4(d)1. The IURO states that Petitioner requires administration of medication by mouth and breathing treatments, maintenance of safety, seizure and aspiration precautions, monitoring of pulse oximetry during sleep with application of supplemental oxygen as needed, incontinence care with maintenance of skin integrity, chest physiotherapy as needed for airway clearance and assistance with daily living. R-3. The IURO also notes that Petitioner attends school for special needs, and has aids rather than a PDN with her during school hours. Ibid. The IURO also indicated that PDN services do not include respite, supervision or routine parenting skills and Petitioner's medical needs can be adequately management by trained layperson caregivers. Ibid.

Petitioner argues in her exceptions that the Initial Decision was flawed. Petitioner asserts the medical evidence submitted was not reviewed by the ALJ. Petitioner further asserts Y.F.'s testimony was "dismissed despite being backed by medical letters from doctors who have been caring for the Petitioner her whole life." Lastly, Petitioner asserts that there are "many statutes that make [Petitioner] eligible for PDN services." Based on my review of the record the Initial Decision is sound, based in law and facts. Petitioner has failed to present any evidence to the contrary, therefore Petitioner's claims are without merit.

Thus, for the reasons stated above, I FIND that Petitioner was properly assessed and denied PDN services based on the documentation provided from United Healthcare. Petitioner's supporting clinical records fail to demonstrate that Petitioner meets the criteria for medical necessity to support continued PDN services. The medical records do not demonstrate or document that she has a need for complex skilled nursing interventions

on an ongoing basis as it appears Petitioner is in need of observation, supervision and monitoring services, which can be met with a non-skilled provider level of care that has already been approved. As such, the decision to deny PDN services was appropriate under N.J.A.C. 10:60-5.4.

THEREFORE, it is on this 1st day of FEBRUARY 2024,

ORDERED:

That the Initial Decision is hereby ADOPTED.

carol grant OBO
Jennifer Langer Jacobs

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OBO Jennifer Langer Jacobs
Date: 2024.01.31 14:43:29 -05'00'

Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance and Health Services