



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Director

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

G.G.,

PETITIONER

v.

UNITED HEALTHCARE,

RESPONDENT.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 08582-15

As Director of the Division of Medical Assistance and Health Services, I

have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence and the contents of the OAL case file. No exceptions to the Initial Decision were filed. Procedurally, the time period for the Agency Head to render a Final Agency Decision is April 22, 2016 in accordance with N.J.S.A. 52:14B-10, which requires an Agency Head to adopt, reject, or modify the Initial Decision within 45 days of the agency's receipt. The Initial Decision was received on March 8, 2016.

Based upon my review of the record, I hereby ADOPT the Initial Decision affirming United Healthcare's determination that Petitioner is eligible for 8 hours of overnight private duty nursing services (PDN). Petitioner appealed United Healthcare's decision to reduce her PDN from 12 hours to 8 hours per day. The ALJ affirmed United Healthcare's determination, and based upon my review of the record, I find no reason to disturb that decision.

In order to be considered for private duty nursing 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).

The regulations addressing the medical necessity for private duty nursing services state that patient observation, monitoring, recording and assessment may constitute a need for private duty nursing services provided that the beneficiary is ventilator dependent, has an active tracheostomy and needs deep suctioning. N.J.A.C. 10:60-5.4(b)(1). Medical necessity may also be established if the individual needs around-the-clock nebulizer treatments, with chest physiotherapy; gastrostomy feeding when complicated by frequent regurgitation and/or aspiration; or a seizure disorder manifested by frequent prolonged seizures, requiring emergency administration of anti-convulsants. N.J.A.C.

10:60-5.4(b)(2). Petitioner does not meet these criteria. Although she uses a BiPap machine for breathing support while she sleeps or is suffering from a respiratory infection, she does not have an active tracheostomy and does not require deep suctioning. Also, while she does receive intermittent chest physiotherapy and nebulizer treatments as necessary, she is not ordered to receive them "around-the-clock" as required by the regulation. Finally, her gastronomy feedings are not complicated by frequent regurgitation or aspiration nor does she suffer from a seizure disorder. Nevertheless, United Healthcare determined that 8 hours of overnight PDN is medically necessary for Petitioner. As the nurse from United testified at the hearing, some children can have trouble using a BiPap machine overnight as the mask could fall off or the child could pull it off. See Initial Decision at page 3. The overnight hours also permit Petitioner's parents with the opportunity to get their own rest. Additionally, Permedion, the independent utilization review organization (IURO), upheld United's decision following Petitioner's external (Stage 3) appeal. Permedion's physician reviewer found that "[t]he potential for respiratory compromise and mucous plugging and the need for respiratory intervention are more likely at night due to the dependent nature of sleep." As a result, the physician agreed that PDN is medically necessary to provide monitoring of Petitioner's respiratory support for 8 hours at night. See R-2 in Evidence and Initial Decision at pages 3 and 5.

While Petitioner does have medical needs, I agree that she does not meet the medical necessity criteria to qualify for PDN during the day. Although it appears that Petitioner's parents rely on the nurse to watch G.G. while they are

at work, this is not an appropriate use of PDN services, as PDN cannot be used purely for monitoring in the absence of a qualifying medical need.

THEREFORE, it is on this 12th day of April 2016

ORDERED:

That the Initial Decision affirming the reduction of private duty nursing services from 12 hours to 8 overnight hours is hereby ADOPTED.



Meghan Davey, Director
Division of Medical Assistance
and Health Services