



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Lt. Governor

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

MEGHAN DAVEY
Director

JO'N.,
PETITIONER
v.
AMERIGROUP,
RESPONDENT.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 17444-15

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 entire 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 September 19, 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 August 5, 2016.

Based upon my review of the record and for the reasons which follow, I hereby MODIFY the Initial Decision reversing Amerigroup's determination that

Petitioner is not eligible for private duty nursing services. I FIND that a reassessment is warranted.

The fair hearing in this matter focused on whether private duty nursing services are medically necessary based on the results of a private duty nursing Acuity Grid in which Petitioner received a score of 23.5. This score is below the cut-off amount of 25 points needed for private duty nursing coverage. However, ~~the reliance on the Acuity Grid to establish eligibility for private duty nursing is~~ misplaced. A child must satisfy the criteria set forth in the applicable regulations in order to qualify for private duty nursing. Only after medical necessity has been established in accordance with the regulatory criteria, is the Acuity Grid used to determine the extent of the need for private duty nursing and the authorized hours of service.¹

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).

¹ 50 points and above qualifies a member for up to 16 hours of PDN per day; 35-49 points up to 12 hours per day; 25-34 points up to 8 hours per day, but less than 25 points results in a denial of PDN. See Exhibit-2 in evidence.

Moreover, 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).

Clearly, Petitioner suffers from a number of chronic medical conditions. What is unclear is whether these conditions require complex, ongoing nursing interventions or are primarily custodial services which involve monitoring and observation in case a particular condition occurs. Petitioner's treating physician cited a need for private duty nursing to continue in order to prevent further medical complications. See R-6 in evidence and Initial Decision at page 10. However, private duty nursing cannot be used purely for monitoring in the absence of a qualifying medical need. For example, the presence of a shunt and feeding tube do not in and of themselves satisfy the threshold eligibility requirements for private duty nursing and no medical evidence was presented at the hearing demonstrating the need for complex ongoing nursing intervention. However, as noted by the ALJ, Petitioner's nursing care notes were not part of the record in this matter. The nursing notes will indicate whether the care provided consisted of continuous skilled nursing care and interventions or only

monitoring and observing Petitioner's medical conditions, which is not skilled care. As a result, I find that the matter should be returned to Amerigroup for another assessment to determine if Petitioner requires complex, continuous intervention by a licensed nurse.

THEREFORE, it is on this 13th day of September 2016,

ORDERED:

~~That this matter is returned to Amerigroup to perform a reassessment.~~

Should Petitioner disagree with the results of that assessment, he may request a fair hearing at that point.



Meghan Davey, Director
Division of Medical Assistance
and Health Services