



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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KIM GUADAGNO
Lt. Governor

MEGHAN DAVEY
Director

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

A.D.,

PETITIONER

ADMINISTRATIVE ACTION

v.

FINAL AGENCY DECISION

OAL DKT. NO. HMA 19558-15

UNITED HEALTHCARE,

RESPONDENT.

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, the contents of the OAL case file and United Healthcare's exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is March 6, 2017 pursuant to an Order of Extension.

Based upon my review of the record and for the reasons which follow, I hereby ADOPT the Initial Decision reversing United Healthcare's determination that Petitioner is not eligible for private duty nursing services. I FIND that private duty nursing services are warranted at least until the next reassessment.

The purpose of private duty nursing services is to provide "individual and continuous nursing care", as opposed to "part-time intermittent care". N.J.A.C. 10:60-5.1(b). 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).

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).

As noted by the ALJ, the dispute in this matter is whether Petitioner's seizure activity has diminished so significantly that she no longer requires the presence of a nurse. United Healthcare accurately points out, and the ALJ

agreed, that Petitioner had not suffered a seizure while her nurses were present for over a year. I am cognizant of the fact that private duty nursing cannot be used purely for monitoring and observation in case a particular condition occurs. In other words, the possibility that Petitioner may experience a seizure does not in and of itself satisfy the threshold eligibility requirement for private duty nursing. However, in this particular case, I, like the ALJ, am concerned that Petitioner has been receiving varying dosages of experimental anti-seizures medications. The fact that she experienced a breakthrough seizure when her physician lowered the dosage, combined with the fact that Petitioner is at risk for Sudden Unexpected Death in Epilepsy Patients (SUDEP) and is cognitively impaired, warrants the continuation of private duty nursing pending the next assessment. The nursing notes for this six month period will indicate the type of care provided to Petitioner and whether she has experienced seizure activity requiring the emergency administration of anti-convulsants.

THEREFORE, it is on this 15th day of February 2017,

ORDERED:

That Petitioner shall continue to receive private duty nursing services pending a reassessment.



Meghan Davey, Director
Division of Medical Assistance
and Health Services