



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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KIM GUADAGNO
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ELIZABETH CONNOLLY
Acting Commissioner

MEGHAN DAVEY
Director

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

N.P.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
UNITED HEALTHCARE,
RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 00433-17

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision and the documents in evidence. Both parties filed exceptions. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is

September 28, 2017, in accordance with an Order of Extension. The Initial Decision was received on June 29, 2017.

This matter arises from United Healthcare's (United) letter notifying Petitioner of its intent to implement Permedion's May 5, 2016 decision that United should provide Petitioner with 112 hours of Private Duty Nursing (PDN) services.

Petitioner receives PDN services through United, a Managed Care Organization (MCO). On March 1, 2016, United notified Petitioner that her PDN services would be reduced from 112 hours per week to 77 hours per week. United's notice contained appeal rights stating Petitioner could request an external appeal through Department of Banking and Insurance (DOBI) or a Medicaid fair hearing. Petitioner chose to pursue an external appeal of the reduction in services through DOBI's independent utilization review organization (IURO) process. N.J.A.C. 11:24-8.7(a). The IURO determines whether the MCO's determination was correct, and if it was not, the IURO must identify the appropriate services for the member. N.J.A.C. 11:24-8.7(k). The IURO's decision is binding on the MCO. N.J.A.C. 11:24-8.7(j). Permedion, DOBI's contracted IURO, conducted the review pursuant to DOBI's rules and regulations. See N.J.A.C. 11:24-8.7.

On May 5, 2016, Permedion determined that United provide Petitioner with 112 hours of PDN services. N.J.A.C. 11:24-8.7(d), (g), (j). The decision noted that Petitioner "does not have a one on one nurse during school hours," and stated the 112 hours of PDN services:

allows the enrollee to attend school during the day and for the caregiver to sleep at night. Therefore, for the reasons noted above, the request for one hundred

and twelve (112) hours per week of PDN care from March 1, 2016 forward is medically necessary.

On May 6, 2016, United notified Petitioner, Permedion and DOBI that Petitioner would receive PDN services in accordance with the May 5, 2016 decision. See N.J.A.C. 11:24-8.7(k). Thereafter, in accordance with Permedion's decision, United allotted 35 hours per week of PDN services to occur during school hours and the remaining 77 hours to occur at home.

On July 19, 2016, Petitioner requested a fair hearing at the Office of Administrative Law (OAL). Petitioner's request referenced DOBI's decision and United's notice confirming DOBI's decision. Petitioner's request also specifically noted United's authorization form expressing the requirement that 7 hours per day of PDN services be provided during school hours and the explanation for the designation. Petitioner requested a fair hearing on the requirement that 7 hours of PDN services be provided during the school day and a failure to provide notice. Petitioner's request was denied and Petitioner appealed the denial to the Appellate Division. On January 5, 2017, the Parties signed a Stipulation of Dismissal in the Appellate Division and the matter was transmitted to the OAL with the issue framed as "Petitioner appeals the requirement that 35 hours per week of private duty nursing services be provided while Petitioner is at school."

Despite the fact that the issue transmitted, as previously requested by Petitioner, gave her the opportunity to contest the designation of PDN services during school hours, Petitioner elected not to address that issue. Instead, Petitioner contends that United did not provide adequate notice because they did not issue another adverse benefits determination letter. However, an adverse

benefits determination letter is required only when an MCO proposes a change to or a termination of a member's services. Here, United was not proposing any action. United was implementing a third party decision. A decision it did not make, but one that it was bound to follow. United was required to notify Petitioner, the IURO and DOBI in writing, indicating how it would implement the IURO's determination. See N.J.A.C. 11:24-8.7(k). On May 6, 2016, United complied with that requirement.

In this instance, Petitioner did not exercise her option to have a Medicaid fair hearing. Instead, she chose to file an external appeal through DOBI. Consequently, questions regarding Permedion's decision would best be addressed through DOBI's IURO process. Instead, it appears that Petitioner is unhappy with the implementation of Permedion's decision and now seeks a Medicaid fair-hearing in what essentially amounts to another bite at the apple.

United did not independently deny, limit, reduce, suspend or terminate Petitioner's services and therefore was not required to issue a separate adverse determination letter with appeal rights. 42 C.F.R. §438.400(b)(1)-(2). United provided notice in compliance with N.J.A.C. 11:24-8.7(k). Nonetheless, Petitioner still had adequate notice and explanation of Permedion's decision to award 112 hours of PDN services, at least in part to ensure that Petitioner could attend school. This is evident through Permedion's decision, United's May 6, 2016 letter, and Petitioner's request for fair hearing. Furthermore, Petitioner specifically asked for and was given the opportunity to challenge that 35 hours per week of PDN services be provided during school hours. Petitioner chose not to do so.

THEREFORE, it is on this ^{27th} day of SEPTEMBER 2017

ORDERED:

That the Initial Decision is hereby REVERSED.


Meghan Davey, Director
Division of Medical Assistance
and Health Services