



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

PO Box 712

TRENTON, NJ 08625-0712

PHILIP D. MURPHY  
Governor

SHEILA Y. OLIVER  
Lt. Governor

SARAH ADELMAN  
Acting Commissioner

JENNIFER LANGER JACOBS  
Assistant Commissioner

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

B.L.	:	
	:	
PETITIONER,	:	<b>ADMINISTRATIVE ACTION</b>
	:	
v.	:	<b>FINAL AGENCY DECISION</b>
	:	
UNITED HEALTHCARE	:	<b>OAL DKT. NO. HMA 04270-20</b>
	:	
RESPONDENTS.	:	

As Assistant Commissioner of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the Office of Administrative Law (OAL) case file and the documents filed below. Neither party filed Exceptions. There was an extension of time requested in which to adopt, reject, or modify a decision on contested cases under N.J.S.A. 52:14B-10(c), in addition to the extension afforded pursuant to 42 CFR 431.244(f)(4)(i)(B) and Executive Order 127 (April 14, 2020), 52 N.J.R. 696(a) (May 4, 2020), in which the timeframe required to adopt, reject, or modify the Initial Decision in this matter was tolled for the length of the Public Health Emergency that was declared pursuant to Executive Order 103 (March 9, 2020), 52 N.J.R. 549(a) (April 6, 2020) and subsequently extended, plus ninety days.

This matter concerns United Healthcare's (United) February 26, 2020 termination of Private Duty Nursing (PDN) services. At the time of United's assessment and termination, Petitioner was a twenty-one year old man. Petitioner had been receiving private duty nursing (PDN) under the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) program since 2015. Under this program, children under the age of 21 are eligible to receive any medically necessary service. Once Petitioner turned 21, he should have begun receiving services through Managed Long Term Services and Supports (MLTSS). MLTSS refers to the delivery of long-term services and supports through Medicaid Managed Care Organizations (MCOs) whether at home, in an assisted living facility, in community residential services or in a nursing home<sup>1</sup>. As a result of aging out of the EPSDT program, Petitioner became subject to the regulatory restrictions which impose a 16 hour daily limit on private duty nursing from all sources and require the primary caregiver to provide a minimum of 8 hours of hands-on care. N.J.A.C. 10:60-5.9(c). At age twenty-two, Petitioner has been diagnosed with an eating disorder, Epidermolysis Bullosa Simplex, history of Esophageal Obstructions, Gastronomy status, Kyphoscoliosis, and a Bilateral Cleft Palate, for which he has undergone multiple surgeries. He currently requires a gastrostomy feeding through a tube in his stomach which is administered overnight.<sup>2</sup> The issue here is whether a medical necessity for PDN services has been established. For the reasons that follow, I hereby REVERSE the Initial Decision and reinstate United's termination of PDN services.

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

---

<sup>1</sup> Beginning July 1, 2014, participants in Home and Community-Based Waivers, such as Global Options (GO), Community Resources for People with Disabilities (CRPD), Traumatic Brain Injury (TBI) and the AIDS Community Care Alternatives Program (ACCAP), were encompassed in the Comprehensive Medicaid Waiver, and enrolled in Managed Long Term Services and Supports (MLTSS) which allows Medicaid managed care organizations (MCO) to manage home and community based services for enrollees.

<sup>2</sup> The nurse's notes indicate that they assist Petitioner in the evening from 4pm to 12am. At some point during their shift, they set up Petitioner's G-tube feeding so that it runs from 10:30 p.m. to 6:00 a.m. and they leave. There is no evidence in the record that Petitioner's mother is working during these hours. In fact, the Initial Decision notes that Petitioner's mother is employed outside the home during the day, although does not identify an employer or work hours.

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).

Patient observation and monitoring alone do not qualify for this type of care. N.J.A.C. 10:60-5.4(d). However, 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). 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.

Clearly, Petitioner suffers from a number of chronic medical conditions, and he should be assessed for Personal Care Assistant (PCA) services if such assessment has not already occurred. However, the testimony and evidence in the record does not show that Petitioner

has a skilled need that can only be addressed by PDN services.<sup>3</sup> In fact, the nurse's notes show that Petitioner's gastronomy feedings have not been complicated by either aspiration or regurgitation, and that Petitioner has remained free of any infection. Furthermore, Petitioner's mother does not testify or provide evidence that Petitioner's gastronomy feedings or other needs require ongoing, skilled nursing intervention. Rather, she argues that Petitioner needs assistance with general care, lifting himself, getting to the bathroom and feeding. In fact, the nurse's notes show that this is the majority of the service they provide during their shift. These activities of daily living (ADL) needs can be addressed by personal care assistance (PCA) services, but do not rise to the level of care that requires skilled nursing intervention.

New Jersey regulations set forth criteria a member must meet to be eligible for PDN services. N.J.A.C. 10:60-5.4, 5.5. Medical necessity for PDN services may be established based on a member's need for gastronomy feedings when complicated by frequent regurgitation and/or aspiration." N.J.A.C. 10:60-5.4(b)(2). There is no evidence in the record that Petitioner's gastronomy feedings are complicated by either of these. In fact, the nurse's notes state that Petitioner is tolerating his feedings without issue, and detail nurses assisting Petitioner with his ADLs rather than performing skilled nursing tasks. Thus, I FIND that United correctly terminated Petitioner's PDN services.

THEREFORE, it is on this <sup>29th</sup> day of JUNE 2021,

ORDERED:

That the Initial Decision is hereby REVERSED.

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

---

<sup>3</sup> The Initial Decision notes that Sarah Kramer, MD opined "This patient is homebound and needs intermittent skilled nursing care..." (R-4). It should be noted that this is form language on the Home Health Certification and Plan of Care that identified Dr. Kramer but did not contain her signature or an estimation of how long these services should be provided upon recertification.