

STATE OF RHODE ISLAND
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
APPEALS OFFICE

██████████

for

██████████

DOCKET No. 24-2039

V.

Department of Human Services

DECISION

I. INTRODUCTION

A telephonic hearing was held on June 24, 2024. ██████████ (hereinafter “the father”), on behalf of ██████████ (hereinafter “the child”), initiated this matter to appeal a decision made by the Rhode Island Department of Human Services (“DHS”), regarding Medicaid-covered private duty nursing (“PDN”) services. After the appeal was filed, DHS reviewed its initial approval of eighteen (18) PDN hours and increased approval to twenty (20) hours. The Appellant’s position is that the number of approved PDN hours is insufficient to meet the child’s needs, and that she should be entitled to at least thirty (30) hours. DHS’ position is that twenty (20) hours of PDN services is the appropriate number of hours for the child based on the amount of skilled nursing services required to care for her. For the reasons discussed in more detail below, the Appellant’s Appeal is denied.

II. JURISDICTION

The Executive Office of Health and Human Services (“EOHHS”) is authorized and designated by R.I.G.L. § 42-7.2-6.1 and EOHHS regulation 210-RICR-10-05-2 to be the entity responsible for appeals and hearings related to Medicaid Long-Term Services & Supports (“LTSS”). The Administrative Hearing

was held in accordance with the Administrative Procedures Act, R.I.G.L. § 42-35.1 et seq., and EOHHS regulation 210-RICR-10-05-2.

III. ISSUE

Is DHS' approval for Medicaid-covered PDN hours in compliance with Medicaid regulations and policy as set forth below?

IV. STANDARD OF PROOF

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, unless otherwise specified, a preponderance of the evidence is generally required to prevail. See (2 Richard J. Pierce, *Administrative Law Treaties* §10.7 (2002) & *Lyons v. Rhode Island Pub. Employees Council 94*, 559 A.2d 1130, 134 (R.I. 1989) (preponderance standard is the “normal” standard in civil cases)). This means that for each element to be proven, the factfinder must believe that the facts asserted by the proponent are more probably true than false. When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. See (*Narragansett Electric Co. vs. Carbone*, 898 A.2d 87 (R.I. 2006)).

V. PARTIES AND EXHIBITS

Consultant Public Health Nurses, Mary Fennessey and Bola Akinjisola, attended the hearing on behalf of DHS. They provided testimony and offered the following as evidence at the hearing:

Exhibit #1 – RI Medicaid PDN Acuity Level Assessment, Date: March 15, 2024.

Exhibit #2 – Medical Records from [REDACTED].

Exhibit #3 – LTSS – Katie Beckett – Parent/Guardian Questionnaire and Early Intervention Records.

Exhibit #4 – EOHHS/DHS Pediatric PDN Policy Guidance Document, October 2021.

Exhibit #5 – Title 210 – Executive Office of Health and Human Services, Chapter 50 – Medicaid Long-Term Services and Supports, Subchapter 05 – Institutional Long-Term Care, Part 2 – Uniform Accountability Procedures for Title XIX Resident Personal Needs Funds in Community Nursing Facilities, ICF/DD Facilities, and Assisted Living Residences, (210-RICR-50-05-2).

Exhibit #6 – RI Medicaid PDN Acuity Level Assessment, Date: April 26, 2024.

Exhibit #7 – PDN Assessment Summary, Date: March 15, 2024.

Exhibit #8 – Updated Approval Letter for [REDACTED], Updated: April 26, 2024.

Exhibit #9 – Approval Letter for [REDACTED], Date: March 15, 2024.

Exhibit #10 – Informal Review of the PDN Acuity Assessment Completed on April 19, 2024.

The father and [REDACTED] (hereinafter “the mother”) provided testimony. Neither the father nor the mother offered any exhibits as evidence.

VI. RELEVANT LAW/REGULATIONS

The Katie Becket program enables otherwise ineligible children who have severe disabling impairments and/or complex health needs to obtain the services they need at home rather than in an institutional setting. See (210-RICR-50-10-03).

PDN is individual and continuous care provided by licensed nurses within their scope of practice under State Law. The services are provided to a beneficiary at home. See (210-RICR-50-10-1.6(A)(16)). The EOHHS/DHS “Pediatric Private Duty Nursing Policy Guidance Document” outlines the criteria for PDN services, and the procedure for assessing and authorizing medically necessary PDN services for children enrolled in Medicaid fee-for-service coverage. PDN services are medically necessary, hourly, skilled nursing services to support a child with complex medical issues to remain in the home. According to the PDN Policy Guidance Document, the intent of PDN is not to replicate a nursing home level of care in the child’s home, but to supplement the care and natural supports provided by the parents/caregivers.

The guidance document also states it “will be assumed that within a finite and reasonable period of time, the caregiver will become knowledgeable, independent, and safe in providing the established plan of care.” PDN is not covered solely to allow the child’s family or caregiver to work or attend school. Requests for PDN services for a Medicaid-eligible client must include current medical information that would support a need for the service. See (EOHHS/DHS Pediatric Private Duty Nursing Policy Guidance Document – October 2021).

PDN services may be considered medically necessary when all the following criteria are met: 1. The child’s condition requires continuous skilled care greater than two (2) hours per day that can only be conducted by a Registered Nurse or Licensed Practical Nurse according to practice standards, 2. The services are ordered by a licensed physician (MD, DO, NP, PA) as part of a treatment plan for a covered medical condition, 3. The cost of services in the home do not exceed the cost of services if the child were to be in a skilled nursing facility, 4. The child can be safely maintained in the home, 5. There is a written treatment plan with short- and long-term goals specified, 6. The services provided are reasonable and necessary for care of a child’s condition and are within accepted standards of nursing practice, 7. The services are performed by a Rhode Island licensed nurse, i.e., Registered Nurse or Licensed Practical Nurse, in accordance with the scope of practice of a licensed nurse (216-RICR-40-05-3), 8. The services must be skilled and not custodial in nature, 9. The child’s needs for skilled care are greater than what can be provided by a Certified Nursing Assistance (CNA), and 10. The severity and/or instability of the child’s clinical condition make the services medically necessary to ensure patient safety.

VII. FINDINGS OF FACT

1. The child is eligible for Medicaid under the Katie Beckett program.
2. Medicaid-covered Home and Community-based Services are available under the Katie Beckett program, based on the child’s medical needs.
3. On March 15, 2024, DHS approved eighteen (18) hours per week of PDN for the child based on her medical needs.

4. The father filed an appeal on March 25, 2024, stating that the child has Down's Syndrome and a G Tube, she needs hearing aids and eyeglasses, she is unable to drink thin liquids, and all liquids must be given via syringe through G Tube. The father also stated, "It will greatly help us with our schedule to help put our daughter in the best possible situation to develop."
5. In response to the Appeal, on April 26, 2024, DHS approved an increase in PDN services to twenty (20) hours per week.
6. Per DHS, a review is required for any approval of PDN services with approved hours based on medical necessity and skilled nursing needs.
7. Per DHS, PDN hours cannot be granted for services of a custodial nature. PDN hours are not intended to replicate a nursing home level of care in a child's home. PDN hours are not awarded to allow the child's family or caregivers to work.
8. DHS utilized a standardized assessment, the Pediatric Private Duty Nursing Acuity Level Assessment, to determine PDN hours based on a clinical document review and telephonic assessment with a parent.
9. The standardized assessment assigns a numeric score to categories including patient age, support needs/primary caregivers, environment/safety, nursing procedures/treatment, and total hours of skilled care needed per day by all caregivers. The score is then used to determine how many hours can be authorized for nursing services a week. The child received a score of forty (40) on the RI Medicaid PDN Acuity Level Assessment, Date: April 26, 2024, which corresponds to between twelve (12) and twenty (20) hours of skilled nursing services a week.
10. The RI Medicaid PDN Acuity Level Assessment, Date: April 26, 2024, completed by DHS, resulted in increased scores in categories of Section B. Supports Needs/Primary Caregivers "Current diagnosis of mental illness and/or behavioral among family members living in the home", Section C. Environment/Safety "Needs assistance to correct safety and health hazards", and Section D. Nursing Procedures/Treatment "CPT/Oscillation vest" and "Moderate sleep disturbance."

11. DHS testified that nurses award scores equitably to each member, with the knowledge and experience of having performed the task on the assessment and that's how the scores are determined according to the guidance document.
12. DHS testified that some of the care and monitoring needed for the child are typical for children of the same age and the general population.
13. The mother testified that the child should have received a score of three (3) for "No other caregivers available to provide care" in Section B. Support Needs/Primary Caregivers because both the mother and father work full time and there are no other caregivers reliably available to provide care for the child during the day.
14. DHS testified that the child was assigned a score of one (1) for "other caregivers are available to provide care" in Section B. Supports Needs/Primary Caregivers because both parents are living in the same household.
15. The mother testified that the child should have received a score of three (3) for "Frequent ongoing assessment (hands on every two (2) to four (4) hours)" in Section D. Nursing Procedures/Treatment because her caregivers are never able to go longer than three (3) hours without having hands on the child.
16. DHS testified that DHS is only allowed to estimate the skilled hands-on services needed for the child, which consist of G Tube related services and medication administration, and, therefore, a score of two (2) for "Moderate ongoing assessment (hands on every four (4) to six (6) hours)" in Section D. Nursing Procedures/Treatment is appropriate for the child.
17. The mother testified that the child should have received a score of two (2) for "Reflux precautions" in Section D. Nursing Procedures/Treatment because the mother and father described various reflux precautions that have been taken for the child since she was born.
18. DHS testified that because there is no formal diagnosis for either reflux or GERD, and reflux leads to aspiration, there can only be a score assigned to either "Reflux precautions" or

“Aspiration precautions” and that is why a score for five (5) was assigned for “Aspiration precautions” instead of a score of two (2) for “Reflux precautions.”

19. The mother testified that the child should have received a score of five (5) for “Acute mobility problems” in Section D. Nursing Procedures/Treatment because the child is developmentally delayed, she has only recently been able to sit up on her own, without assistance, and she cannot walk or stand without assistance.
20. DHS testified that “Acute mobility problems” are specifically related to something like a fracture, that will reah within a short period of time, and that hours for this area are typically given on a temporary basis and, therefore, the child’s score of zero (0) for this area is justified.
21. The mother testified that the child should receive a score of eight (8) for “Attends school with RN” because the child will likely be placed in school with a RN when she turns three (3) in five (5) months.
22. The mother testified that the child should have received a score higher than two (2) for “Teaching/complex” in Section D. Nursing Procedures/Treatment because the score was based on an arbitrary decision and not based in reality.
23. DHS testified that the score for “Teaching/complex” is based on bow many skilled events occur during the day that require the assistance of a skilled nurse such as helping with the cbild’s G Tube and medication administration and, therefore, the child’s score of two (2) in this area is justified.
24. The mother testified that the child’s score for “Moderate sleep disturbance” in Section D. Nursing Procedures/Treatment was arbitrarily tabulated and that the child should receive a higher score than two (2) in this area because the child experiences significant sleep disturbances that have been occurring for several months and that the child is currently awaiting her June 2025 appointment with [REDACTED] to address this issue.

25. DHS testified that “Moderate sleep disturbance” also considers the age of the child and what the general population at that age is doing and, therefore, the child’s score of three (3) in this area is justified.
26. The mother testified that the child should receive a score of four (4) for “5-10 hours” in Section E. Total Hours of Skilled Care Needed per day (by all care givers) because she requires help with physical and occupational therapy exercises, maintaining the G Tube and reinserting it when it gets pulled out, preparing and administering her medication, administering water throughout the day, administering her feeds at least twice a day, and consistent dressing changes when the G Tube site leaks.
27. DHS testified that the score of one (1) for “1-4” hours in Section E. Total Hours of Skilled Care Needed per day (by all care givers) is appropriate for the child’s needs based on the amount of time needed to complete skilled nursing services related to her G Tube and medication administration.
28. The mother testified that the family has been unable to find a day care provider that is willing to provide services to the child based on her complex medical needs, other than one with a waiting list of four years, and that the child has never received case management services as a recipient of Katie Beckett Medicaid coverage.

VIII. DISCUSSION

PDN services are medically necessary, hourly, skilled nursing services to support a child with complex medical issues to remain in the home and the intent of PDN is not to replicate a nursing home level of care in the child’s home, but to supplement the care and natural supports provided by the parents/caregivers. Requests for PDN services for a Medicaid-eligible client must include current medical information that would support a need for the service. The services must be skilled and not custodial in nature and the needs for skilled care must be greater than what can be provided by a CNA. DHS’ position is that based on the RI Medicaid PDN Acuity Level Assessment, Date: April 26, 2024, the calculation of

twenty (20) hours per week of PDN services is appropriate because the only skilled nursing services that are required for the child are based on her G Tube and medication administration needs.

The mother testified that she is concerned that due to her and the father's work schedules she may be unable to arrange for someone to care for the child. The EOHHS/DHS Pediatric PDN Policy Guidance Document, October 2021, clearly states that PDN is not covered solely to allow the child's family or caregiver to work or attend school. The mother also testified that she is unable to locate a day-care provider that is willing to care for the child due to her complex medical needs. DHS testified that a case manager could help to locate a childcare provider and that DHS would help to coordinate case management services for the child, so that a case manager may assist the family in their search for a day-care provider that can properly care for the child.

Some of the additional services requested by the mother and father involved monitoring the child, such as supervising the child during her feedings. DHS testified that monitoring is considered a non-skilled custodial task, typically provided by a CNA in a medical facility and/or by a parent or guardian in the community. DHS also testified that some of the care and monitoring needs for the child are typically required for children of the same age and the general population. One of the other additional services requested by the mother and father was for situations that would happen in the future, such as the need to attend school with a registered nurse. Because the child is not currently in school, the RI Medicaid PDN Acuity Level Assessment, Date: April 26, 2024, accurately reflects the lack of a need for assistance in this area. Because neither the mother nor father was able to provide medical records as evidence to show that the child required more than twenty (20) hours of PDN hours a week, there is a preponderance of evidence to show that DHS approved Medicaid-covered PDN hours in compliance with Medicaid regulations and policy.

IX. CONCLUSION OF LAW

After careful review of the testimony and evidence present at the administrative hearing, this Appeals Officer concludes that:

1. PDN services are medically necessary, hourly, skilled nursing services to support a child with complex medical issues to remain in the home.
2. The intent of PDN services is to supplement the care and natural supports provided by the parent/caregiver and it is not covered solely to allow the child's parent(s) or caregiver(s) to work.
3. Monitoring is considered a non-skilled task.
4. The child's documented skilled nursing needs require twenty (20) hours of PDN services.

X. DECISION

Based on the foregoing findings of fact, conclusions of law, evidence, and testimony it is found that a final order be entered that there is sufficient evidence to support DHS' authorization of Medicaid-covered PDN hours of twenty (20) hours per week.

APPEAL DENIED

/s/ Jack Peloquin

Jack Peloquin

Appeals Officer

NOTICE OF APPELLATE RIGHTS

This final order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the

