STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

[redacted],

Appellant
_____/

Docket No. 2009-13652 CHC
Case No. [redacted]
Load No. [redacted]

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.,* following the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. [redacted] appeared on behalf of her son, [redacted] (Appellant).

[redacted], represented the Michigan Department of Community Health (Department). [redacted] appeared as a Department witness.

ISSUE

Did the Department properly deny the Appellant's request for an increase from eight (8) to 10 hours per day of Private Duty Nursing (PDN) services?

FINDINGS OF FACT

Based upon the competent, material, and substantial evidence presented, I find, as material fact:

1. The Appellant, born [redacted] is a Medicaid beneficiary, and receives Children's Special Health Care Services (CSHCS). His medical diagnoses include Hunter's Syndrome, also known as mucopolysaccharidosis type 2, chorea, refractory partial epilepsy and global developmental delay. He is non-verbal and is completely dependent on others for care. *(Exhibit 1, p. 10)*

2. On [redacted], the Appellant was issued a notification of denial of an increase from eight (8) to 10 hours per day of private duty nursing services, after the Department determined his medical condition had stabilized following a recent hospitalization.

3. The Appellant's Home Health Certification and Plan of Care for the period [redacted] through [redacted], provides, in pertinent part as follows: *"**Orders:** …His pain and discomfort are treated with repositioning, pain medication, and anti-anxiety medications. The pain also appears to be generalized in nature. He receives Methadone every 12 hours for pain which his mother has indicated is beneficial in treating the pain. He receives continuous oxygen per nasal cannula. He receives oral suctioning as needed. He receives nutrition and medication via his J-tube. His prognosis is poor." (Exhibit 1, p. 35)*

4. On [redacted] the Appellant suffered seizures at [redacted]. The duration of each seizure ranged from 12 to 35 seconds each. *(Exhibit 1, Adult and Pediatric Seizure Record, p. 44)*

5. On [redacted], the Appellant suffered seizures at [redacted]. On [redacted], the Appellant suffered one seizure at [redacted]. The duration of each seizure ranged from 12 to 30 seconds each. *(Exhibit 1, Adult and Pediatric Seizure Record, p. 45)*

6. On [redacted], the Appellant suffered seizures at [redacted]. On [redacted], the Appellant suffered two seizures, one at [redacted] and again at [redacted]. The duration of each seizure ranged from 15 to 50 seconds each. *(Exhibit 1, Adult and Pediatric Seizure Record, pp. 46-47)*

7. On [redacted], the Appellant suffered seizures at [redacted] and at [redacted]. The duration of each seizure ranged from 25 to 40 seconds each. *(Exhibit 1, Adult and Pediatric Seizure Record, p. 47)*

8. On [redacted], the Appellant suffered seizures at [redacted], and [redacted]. [redacted], the Appellant suffered seizures a [redacted]. On [redacted], the Appellant suffered one (1) seizure at [redacted]. The duration of each seizure ranged from 10 to 35 seconds each. *(Exhibit 1, Adult and Pediatric Seizure Record, pp. 49-49)*

9. On [redacted] the Appellant required suctioning 30 times between the hours of [redacted]. On [redacted], the Appellant required suctioning 11 times between the hours of [redacted]. His vital signs remained stable throughout this period. It appears, however, that the Appellant suffered seizures in and around the times he required suctioning. *(Exhibit 1, Pediatric Extended Hour Nursing Flow Sheet; pp. 50-53)*

10. On [redacted], the Appellant required suctioning eight (8) times between the hours of [redacted] the following day ([redacted]). His vital signs remained stable. No seizure activity is reported. *(Exhibit 1, Pediatric Extended Hour Nursing Flow Sheet; pp. 54-55)*

11. On [redacted], the Appellant required suctioning eight (8) times between the hours of [redacted]. His vital signs remained stable. However, seizure activity was reported to occur in and around the times he required suctioning. *(Exhibit 1, Pediatric Extended Hour Nursing Flow Sheet; pp. 56-57)*

12. On [redacted] the Appellant required suctioning 13 times between the hours of [redacted]. His vital signs remained stable. However, seizure activity was reported to occur in and around the times he required suctioning. On [redacted], and into [redacted], the Appellant required suctioning eight (8) times between the hours of [redacted]. His vital signs remained stable; no seizure activity is reported during this period. *(Exhibit 1, Pediatric Extended Hour Nursing Flow Sheet; pp. 58-61)*

13. On [redacted], the Appellant required suctioning eight (8) times between the hours of [redacted]. Although his vital signs appear to have remained stable, he suffered seizure activity during this period. *(Exhibit 1, Pediatric Extended Hour Nursing Flow Sheet; pp. 62-63)*

14. For the period [redacted] on [redacted], through [redacted] on [redacted], the Appellant required suctioning 12 times. His vital signs remained stable; no seizure activity is reported. *(Exhibit 1, Pediatric Extended Hour Nursing Flow Sheet; pp. 64-65)*

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

General information regarding Private Duty Nursing (PDN) may be found in the Department's Medicaid Provider Manual, Private Duty Nursing, Section 1.

> This chapter applies to Independent & Agency Private Duty Nurses (Provider Types 10, 15).
>
> Private duty nursing (PDN) is a Medicaid benefit when provided in accordance with the policies and procedures outlined in this manual. Providers must adhere to all applicable coverage limitations, policies and procedures set forth in this manual.

> PDN is covered for beneficiaries under age 21 who meet the medical criteria in this section. If the beneficiary is enrolled in or receiving case management services from one of the following programs, that program authorizes the PDN services.
>
> - Children's Special Health Care Services (CSHCS) - Prior Authorization Review Division
> - Home and Community-Based Services Waiver for the Elderly and Disabled (known as the MI Choice Waiver)
> - Children's Waiver (Community Mental Health Service Program [CMHSP])
> - Habilitation Supports Waiver (CMHSP)
>
> For a Medicaid beneficiary who is not receiving services from one of the above programs, the Prior Authorization Review Division reviews the request for authorization and authorizes the services if the medical criteria and general eligibility requirements are met.
>
> Beneficiaries who are receiving PDN services through one Medicaid program cannot seek supplemental PDN hours from another Medicaid Program (i.e., CSHCS, MI Choice Waiver, Children's Waiver, Habilitation Supports Waiver).
>
> For beneficiaries 21 and older, PDN is a waiver service that may be covered for qualifying individuals enrolled in the MI Choice Waiver or Habilitation Supports Waiver. When PDN is provided as a waiver service, the waiver agent must be billed for the services.
>
> *Medicaid Provider Manual; Private Duty Nursing, Section 1, January 1, 2007, page 1.*

The Medicaid covered PDN service limitations are provided in the Medicaid Provider Manual, Private Duty Nursing, Section 1.6.

> The purpose of the PDN benefit is to assist the beneficiary with medical care, enabling the beneficiary to remain in their home. The benefit is not intended to supplant the caregiving responsibility of parents, guardians, or other responsible parties (e.g., foster parents). There must be a primary caregiver (i.e., parent, guardian, significant other adult) who resides with a beneficiary under the age of 18 and the caregiver must provide a monthly average of a minimum of eight hours of care during a typical 24-hour period. The calculation of the number of hours authorized per month includes eight hours of care that will be provided by the caregiver during a 24-hour period, which are then averaged across the hours authorized for the month. The

> caregiver has the flexibility to use the monthly authorized hours as needed during the month.
>
> The time a beneficiary is under the supervision of another entity or individual (e.g., in school, in day/child care, in work program) cannot be used to meet the eight hours of obligated care as discussed above, nor can the eight hours of care requirement for beneficiaries under age 18 be met by other public funded programs (e.g., MDCH Home Help Program), or other resources for hourly care (e.g., private health insurance, trusts, bequests, private pay).
>
> *Medicaid Provider Manual. Private Duty Nursing, Section 1.6, January 1, 2007, pages 4 - 5.*

The medical criteria for PDN eligibility is provided in the Medicaid Provider Manual, Private Duty Nursing, in Section 2.2:

> To qualify for PDN, the beneficiary must meet the medical criteria of **either** I and III below **or** II and III below:
>
> **Medical Criteria I.** The beneficiary is dependent daily on technology-based medical equipment to sustain life. "Dependent daily on technology-based medical equipment" means:
>
> - Mechanical ventilation four or more hours per day or assisted respiration (Bi-PAP or CPAP); or
> - Oral or tracheostomy suctioning 8 or more times in a 24-hour period; or Nasogastric tube feedings or medications when removal and insertion of the nasogastric tube is required, associated with complex medical problems or medical fragility; or
> - Total parenteral nutrition delivered via a central line, associated with complex medical problems or medical fragility; or
> - Continuous oxygen administration, in combination with a pulse oximeter and a documented need for observations and adjustments in the rate of oxygen administration.
>
> **Medical Criteria II.** Frequent episodes of medical instability within the past three to six months, requiring skilled nursing assessments, judgments or interventions as described in III below, due to a substantiated progressively debilitating physical disorder.
>
> - "Frequent" means at least 12 episodes of medical instability related to the progressively debilitating physical disorder within

the past six months, or at least six episodes of medical instability related to the progressively debilitating physical disorder within the past three months;

- "Medical instability" means emergency medical treatment in a hospital emergency room or inpatient hospitalization related to the underlying progressively debilitating physical disorder;
- "Emergency medical treatment" means covered inpatient and outpatient services that are furnished by a provider that is qualified to furnish such services and are needed to evaluate or stabilize an emergency medical condition. "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to place the health of the individual in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.
- "Progressively debilitating physical disorder" means an illness, diagnosis, or syndrome that results in increasing loss of function due to a physical disease process, and that has progressed to the point that continuous skilled nursing care (as defined in III below) is required; and
- "Substantiated" means documented in the clinical/medical record, including the nursing notes.

For beneficiaries described in II, the requirement for frequent episodes of medical instability is applicable only to the initial determination of medical necessity for PDN. Determination of continuing eligibility for PDN for beneficiaries defined in II is based on the original need for skilled nursing assessments, judgments, or interventions as described in III below.

Medical Criteria III. The beneficiary requires continuous skilled nursing care on a daily basis during the time when a licensed nurse is paid to provide services.

"Continuous" means at least once every three hours throughout a 24-hour period, and/or when delayed interventions may result in further deterioration of health status, in loss of function or death, in acceleration of the chronic condition, or in a preventable acute episode.

Equipment needs alone do not create the need for skilled nursing services.

"Skilled nursing" means assessments, judgments, interventions, and evaluations of interventions requiring the education, training, and experience of a licensed nurse.

> Skilled nursing care includes, but is not limited to, performing assessments to determine the basis for acting or a need for action; monitoring fluid and electrolyte balance; suctioning of the airway; injections; indwelling central venous catheter care; managing mechanical ventilation; oxygen administration and evaluation; and tracheostomy care.
>
> *Medicaid Provider Manual,*
> *Private Duty Nursing, Section 2.2, January 1, 2007, pages 7-8.*

The Appellant's initial eligibility for PDN is not at issue in this proceeding, but rather, whether her request for an additional four (4) hours per day of PDN is medically necessary, and appropriate, considering her medical condition(s). Accordingly, contributing to my decision is a discussion of how the Department determines the intensity of care and maximum amount of PDN to approve.

The Medicaid Provider Manual contains criteria for determining the intensity of care and maximum PDN, as follows:

> **2.3 DETERMINING INTENSITY OF CARE AND MAXIMUM AMOUNT OF PDN**
>
> As part of determining the maximum amount of PDN for which a beneficiary is eligible, an appropriate Intensity of Care category must be determined. This is a clinical judgment based on the following factors:
>
> - The beneficiary's medical condition;
> - The type and frequency of needed nursing assessments, judgments and interventions; and
> - The impact of delayed nursing interventions.
>
> Equipment needs alone do not determine intensity of care. Other aspects of care (e.g., administering medications) are important when developing a plan for meeting the overall needs of the beneficiary, but do not determine the number of hours of nursing for which the beneficiary is eligible.
>
> **High Category**
>
> - Beneficiaries requiring nursing assessments, judgments and interventions by a licensed nurse (RN/LPN) at least one time each hour throughout a 24-hour period, when delayed nursing interventions could result in further deterioration of health status, in loss of function or death, or in acceleration of the chronic condition.

Medium Category

- Beneficiaries requiring nursing assessments, judgments and interventions by a licensed nurse (RN/LPN) at least one time every three hours throughout a 24-hour period, or at least 1 time each hour for at least 12 hours per day, when delayed nursing interventions could result in further deterioration of health status, in loss of function or death, or in acceleration of the chronic condition. This category also includes beneficiaries with a higher need for nursing assessments and judgments due to an inability to communicate and direct their own care.

Low Category

- Beneficiaries requiring nursing assessments, judgments and interventions by a licensed nurse (RN/LPN) at least one time every three hours for at least 12 hours per day, as well as those beneficiaries who can participate in and direct their own care.

Medicaid uses the "Decision Guide for Establishing Maximum Amount of Private Duty Nursing to be Authorized on a Daily Basis" (below) to establish the amount of PDN that is approved. The Decision Guide is used to determine the appropriate range of nursing hours that can be authorized under the Medicaid PDN benefit and defines the "benefit limitation" for individual beneficiaries. The Decision Guide is used by the authorizing entity after it has determined the beneficiary meets both general eligibility requirements and medical criteria as stated above. The amount of PDN (i.e., the number of hours) that can be authorized for a beneficiary is based on several factors, including the beneficiary's care needs which establish medical necessity for PDN, the beneficiary's and family's circumstances, and other resources for daily care (e.g., private health insurance, trusts, bequests, private pay). To illustrate, the number of hours covered by private health insurance is subtracted from the hours approved under Medicaid PDN. These factors are incorporated into the Decision Guide. The higher number in the range is considered the maximum number of hours that can be authorized. Except in emergency circumstances, Medicaid does not approve more than the maximum hours indicated in the guide.

Only those factors that influence the maximum number of hours that can be authorized are included on this decision matrix. Other factors (e.g., additional dependent children, additional children with special needs, and required nighttime interventions) that impact the caregiver's availability to provide care should be identified during an assessment of service needs. These factors have implications for service planning and should be considered when determining the actual number of hours (within the range) to authorize.

Decision Guide for Establishing Maximum Amount of Private Duty Nursing to be Authorized on a Daily Basis

INTENSITY OF CARE; (LOW, MEDIUM, HIGH)
Average Number of Hours Per Day

FAMILY SITUATION/ RESOURCE CONSIDERATIONS

Factor I – Availability of Caregivers Living in the Home

2 or more caregivers; both work or are in school F/T or P/T; average number of hours is, as follows: *LOW INTENSITY-4 to 8 hours; MEDIUM INTENSITY-6 to 12 hours; HIGH INTENSITY-10 to 16 hours.*

2 or more caregivers; 1 works or is in school F/T or P/T; average number of hours is, as follows: *LOW INTENSITY-4 to 8 hours; MEDIUM INTENSITY-6 to 12 hours; HIGH INTENSITY-10 to 16 hours.*

2 or more caregivers; neither works or is in school at least P/T

LOW INTENSITY-1 to 4 hours; MEDIUM INTENSITY-4 to 8 hours; HIGH INTENSITY-6 to 12 hours.

1 caregiver; works or is in school F/T or P/T

LOW INTENSITY-4 to 8 hours; MEDIUM INTENSITY-6 to 12 hours; HIGH INTENSITY-10 to 16 hours.

1 caregiver; does not work or is not a student

LOW INTENSITY-1 to 4 hours; MEDIUM INTENSITY-6 to 10 hours; HIGH INTENSITY-8 to 14 hours.

Factor II – Health Status of Caregiver(s)

Significant health issues;	Add 2 hours if Factor I <= 8 (Low Intensity) Add 2 hours if Factor I <= 12 (Medium Intensity) Add 2 hours if Factor I <= 14(High Intensity)
Some health issues;	Add 1 hour if Factor I <= 7 (Low Intensity) Add 1 hour if Factor I <= 9 (Medium Intensity) Add 1 hour if Factor I <= 13 (High Intensity)

Factor III – School *

Beneficiary attends school 25 or more hours per week, on average

Maximum of 6 hours per day (Low Intensity)

Maximum of 8 hours per day (Medium Intensity)

Maximum of 12 hours per day (High Intensity)

* Factor III limits the maximum number of hours which can be authorized for a beneficiary:

- Of any age in a center-based school program for more than 25 hours per week; or
- Age six and older for whom there is no medical justification for a homebound school program.

In both cases, the lesser of the maximum "allowable" for Factors I and II, or the maximum specified for Factor III, applies.

When using the Decision Guide, the following definitions apply:

- "Caregiver": legally responsible person (e.g., birth parents, adoptive parents, spouses), paid foster parents, guardian or other adults who are not legally responsible or paid to provide care but who choose to participate in providing care.
- "Full-time (F/T)": working at least 30 hours per week for wages/salary, or attending school at least 30 hours per week.
- "Part-time (P/T)": working at least 15 hours per week for wages/salary, or attending school at least 15 hours per week.
- "Significant" health issues: one or more primary caregiver(s) has a health or emotional condition that prevents the caregiver from providing care to the beneficiary (e.g., beneficiary weighs 70 pounds and has no mobility and the primary caregiver just had back surgery and is in a full-body cast).
- "Some" health issues: one or more primary caregiver(s) has a health or emotional condition, as documented by the caregiver's treating physician, that interferes with, but does not prevent, provision of care (e.g., caregiver has lupus, alcoholism, depression, back pain when lifting, lifting restrictions, etc.).
- "School" attendance: The average number of hours of school attendance per week is used to determine the maximum number of hours that can be authorized for the individual of school age.

The average number of hours is determined by adding the number of hours in school plus transportation time. During planned breaks of at least 5 consecutive

> school days (e.g., spring break, summer vacation), additional hours can be authorized within the parameters of Factors I and II.
>
> The Local School District (LSD) or Intermediate School District (ISD) is responsible for providing such "health and related services" as necessary for the student to participate in his education program. Unless medically contraindicated, individuals of school age should attend school.
>
> Factor III applies when determining the maximum number of hours to be authorized for an individual of school age. The Medicaid PDN benefit cannot be used to replace the LSD's or ISD's responsibility for services (either during transportation to/from school or during participation in the school program.
>
> *Michigan Department of Community Health*
> *Medicaid Provider Manual; Private Duty Nursing*
> *Version Date: January 1, 2008; Pages 9-11*

A Medicaid beneficiary bears the burden of proving he or she was denied a medically necessary and appropriate service. See, e.g., *J.K By and Through R.K. v Dillenberg*, 836 F Supp 694, 700 (Ariz, 1993). Whether the Appellant satisfied his burden here must be determined in accord with the preponderance of the evidence standard. See, e.g., *Aquilina v General Motors Corp*, 403 Mich 206, 210; 267 NW2d 923 (1978).

Proof by a preponderance of the evidence requires that the fact finder believe the evidence supporting the existence of the contested fact outweighs the evidence supporting its non-existence. See, e.g., *Martucci v Detroit Police Comm'r*, 322 Mich 270, 274; 33 NW2d 789 (1948).

Regarding an appeal filed with the State Office of Administrative Hearing and Rules for the Department of Community Health, the Administrative Law Judge is given ultimate discretion to determine the weight and credibility of the evidence presented. *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 491; 668 NW2d 402 (2003); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996) (the fact finder is provided with the unique opportunity to observe or listen to witnesses; and, it is the fact finder's responsibility to determine the credibility and weight of the testimony and other evidence provided).

It is the province of the Administrative Law Judge to adjudge the credibility and weight to be afforded the evidence presented. *Maloy v. Stuttgart Memorial Hosp.*, 316 Ark. 447, 872 S.W.2d 401 (1994).

The Department's witness testified that, although she was not involved in the decision to deny an increase in hours, she is familiar with the medical documentation relied upon to make that decision.

The Department witness testified that she considered all documentation submitted by the home health agency and other physicians, and concluded that, although the Appellant remains in the

medium intensity level of care, the increase from eight to 10 hours per day is not medically necessary, because the Appellant's condition has stabilized following a recent hospitalization.

The Appellant's mother testified that the Appellant's nasal suctioning needs vary but that his seizure activity has increased, and that he requires suctioning on a regular basis, especially during periods of sleep. The Appellant's mother further testified that, in addition to the Appellant, she is caring for another special needs child living in the home who also suffers from Hunter's Syndrome.

My review of the medical documentation reflects a child who, as of the date of those assessments, was in no immediate distress, or that she required nursing assessments, judgments and interventions by a licensed nurse (RN/LPN) at least one time each hour throughout a 24- hour period, when delayed nursing interventions could result in further deterioration of health status, in loss of function or death, or in acceleration of the chronic condition. She would therefore not qualify as a high category of intensity of care beneficiary.

However, the medical documentation does, in my opinion, support a conclusion that the frequency with which Appellant is suctioned is, in fact, indicative of the need for nursing assessments, judgments and interventions by a licensed nurse (RN/LPN) at least one time every three hours throughout a 24-hour period, or at least 1 time each hour for at least 12 hours per day, when delayed nursing interventions could result in further deterioration of health status, in loss of function or death, or in acceleration of the chronic condition.

The medical documentation leads me to conclude the Appellant's day-to-day suctioning needs vary, sometimes significantly, and that his overall respiratory conditions may be medically challenging. The medical documentation, as well as the credible testimony provided in this proceeding, also leads me to conclude that the Appellant's seizure activity has increased making it likely he requires a higher need for nursing assessments and judgments due to an inability to communicate and direct his own care.

Based on the medical evidence presented, I therefore conclude the Appellant's medical conditions properly place him in the "Medium Intensity" category of care, with 2 or more caregivers, one of whom works full time outside the home. She is therefore entitled to between four (4) and ten (10) hours of PDN per day.

Because 10 is the maximum number of PDN hours allowable under the medium category of intensity of care, the focus of this decision shall be on whether the Appellant is eligible for up to ten (10) hours of PDN per day, and ultimately, whether the Department improperly denied the Appellant's request for an increase from eight (8) to 10 hours per day.

Present policy on the impact other dependent or special-needs children has on an authorization of PDN hours provides, as follows:

> *"... Other factors (e.g., additional dependent children, additional children with special needs, and required nighttime interventions) that impact the caregiver's availability to provide care should be identified during an assessment of service needs. These factors have implications for service planning and should be considered when*

> *determining the actual number of hours (within the range) to authorize. (Emphasis added by ALJ)*
>
> *(Medicaid Provider Manual; Private Duty Nursing; Version Date: October 1, 2007; Page 10)*

The Department witness testified the Appellant's medical needs did not support an increase of PDN hours. She failed to address whether, if at all, the Department considered the fact that the Appellant's parents were caring for two additional special-needs children, when deciding the additional hours were not medically necessary. The Department must implement its programs in accordance with the federal law and state policy. It presented no evidence challenging the mother's assertion that, in addition to the Appellant, she is caring for a second medically challenged child. The Department also did not address this issue during the hearing, and, in fact, did not testify as to whether this factor was ever considered in the denial.

The Department witness indicated it relied on Medical Criteria II in denying the increase, by claiming the Appellant would have been eligible for 10 hours of PDN had he frequently been hospitalized during the period under review.

Application of Criteria II is inappropriate in this case. The "frequent episodes of medical instability" language of Medical Criteria II applies only to the initial determination of medical necessity, not to a determination of continuing eligibility for PDN. Rather, a determination of continuing eligibility, and, by reasonable inference, the medical necessity for increased hours, is based on the original need for skilled nursing assessments, judgments or interventions as described in Medical Criteria III.

Medical Criteria III defines "skilled nursing" to include, among other things, suctioning of the airway, and exercising judgments, interventions, and evaluations of interventions requiring the education, training and experience of a licensed nurse. (Emphasis supplied by ALJ)

The medical evidence presented clearly supports a conclusion that the Appellant requires frequent suctioning of the airway, that he is experiencing an increasing number of seizures, that his physical condition is declining, and that his medical prognosis is poor.

The preponderance of the evidence presented therefore leads me to conclude the Department's prior authorization review has not included adequate consideration of family situation/resource consideration factors, and has failed to properly apply overall policy in rendering the denial of Appellant's request for a daily increase in PDN hours.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I decide the Department improperly denied the Appellant's request for an increase of PDN hours per day.

[redacted]
Docket No. 2009-13652 CHC
Hearing Decision & Order

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED. The Department shall authorize the Appellant to receive a total of ten (10) hours of PDN per day.

Stephen B. Goldstein
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 5/11/2009

***** NOTICE *****

The State Office of Administrative Hearings and Rules may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The State Office of Administrative Hearings and Rules will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.