

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████,

Appellant

**Docket No. 2010-35136 PAC
Case No. ██████████**

DECISION AND ORDER

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

After due notice, a hearing was held on ██████████. ██████████ appeared on behalf of the Appellant. She had no witnesses. ██████████, Appeals Review Officer, represented the Department. Her witness was ██████████, RN, MDCH.

ISSUE

Did the Department properly reduce the Appellant's private duty nursing hours?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Appellant is an ██████-month old Medicaid beneficiary.
2. The Appellant is afflicted with congenital heart disease, interrupted aortic arch and AVSD, traceobronchomalacia and chronic lung disease, chronic respiratory failure requiring tracheotomy and ventilator support. He has co-morbidities of dysphagia and craniosynostosis – requiring future surgery. Department's Exhibit A, pp. 14, 19.

3. On ██████████, the Appellant was approved for Private Duty Nursing services in the amount of 16 hours per day – ██████████ through ██████████. Department's Exhibit A, p. 2.
4. On ██████████, the Appellant's PDN were reduced to 14 hours per day through ██████████. Department's Exhibit A, p. 2.
5. On ██████████, the Appellant was notified that PDN would be reduced to 12 hours a day. Department's Exhibit A, p. 5.
6. The instant appeal was received by the State Office of Administrative Hearings and Rules on ██████████. Appellant's Exhibit #1.

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.

[] PRIOR AUTHORIZATION

Medicaid requires prior authorization (PA) to cover certain services before those services are rendered to the beneficiary. The purpose of PA is to review the medical need for certain services....

Medicaid Provider Manual (MPM), Practitioner, July 1, 2010, page 4.

Furthermore, the Medicaid Provider Manual (MPM) provides guidance for providers and for the authorization of PDN hours according to medical criteria and intensity of care in relation to family situation and other resources. The employment status of the caregiver (parents) is a key consideration in addition to the improving, stable or deteriorating medical condition of the beneficiary:

[] GENERAL INFORMATION

This chapter applies to Independent and Agency Private Duty Nurses.

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 Waiver (the Community Mental Health Services Program)
- Habilitation Supports Waiver (the Community Mental Health Services Program)
- Home and Community-Based Services Waiver for the Elderly and Disabled (the MI Choice Waiver)

For a Medicaid beneficiary who is not receiving services from one of the above programs, the Program 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., Children's Waiver, Habilitation Supports Waiver, MI Choice Waiver).

For beneficiaries 21 and older,

MPM, Private Duty Nursing §1, page 1, July 1, 2010¹.

[] MEDICAL CRITERIA

To qualify for PDN, the beneficiary must meet standards of significant medical criteria in certain combinations of medical exigency. See MPM at §2.3 for an unabridged version of medical criteria.

The Department witness ██████████ said that there was no dispute from the Department about the need for care – but rather the intensity of care evaluation was necessary.

¹ This edition of the MPM is substantially similar to the version in place at the time of appeal.

**[] DETERMINING INTENSITY OF CARE AND
MAXIMUM AMOUNT OF PDN**

As part of determining the maximum amount of PDN a beneficiary is eligible for, his 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.

....

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**

FAMILY SITUATION/ RESOURCE CONSIDERATIONS		INTENSITY OF CARE Average Number of Hours Per Day		
		LOW	MEDIUM	HIGH
Factor I – Availability of Caregivers Living in the Home	2 or more caregivers; both work or are in school F/T or P/T	4-8	6-12	10-16
	2 or more caregivers; 1 works or is in school F/T or P/T	4-6	4-10	10-14
	2 or more caregivers; neither works or is in school at least P/T	1-4	4-8	6-12
	1 caregiver; works or is in school F/T or P/T	4-8	6-12	10-16

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	1 caregiver; does not work or is not a student	1-4	6-10	8-14
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MPM §§2.3, 2.4 *Supra* pages 7-10²

The Department witness testified that the case is reviewed between 60-90 days to determine if the beneficiary is progressing – so that hours might be adjusted absent documented instability.

She said that the PDN agency provided no information on acute interventions, additional hospitalizations or periods of instability acting on the beneficiary. The child's status was reviewed by pediatric physician Dr. [REDACTED]. Both the Department witness and the Appellant's representative said the beneficiary is now doing "most of the work" with regard to mechanical ventilation and that nurses were simply "monitoring." This represented a major step from the Appellant's assessment at age [REDACTED] months as prepared by Dr. [REDACTED]. [See Department's Exhibit A at page 19]

The Appellant's representative said that she would be returning to work soon for up to 30-hours a week prior to the Appellant's scheduled cranial surgery and that she hoped for a complete recovery allowing the child to come home to recuperate. She believed that increased PDN was necessary to help the child gain weight.

On review, it was apparent that the Appellant had not communicated the prospective employment factor to the Department and while this would be an important consideration in the future - the establishment of 12-hours was still at the high end for intensity of care under the "medium" rubric of care. In other words the child was improving and achieving the goals of adding weight and reducing reliance on a mechanical ventilator.

The Appellant's representative is aware that PDN hours track the condition of the child and are subject to adjustment amid several variables.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly reduced the Appellant's PDN hours to 12 hours per day.

² For a complete chart containing factors II and III (not relevant in this case) see MPM PDN at page 10


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IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



Date Mailed: 8/11/2010

***** 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.