

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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**IN THE MATTER OF:**

██████████,

Appellant

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Docket No. 2011-33433 PAC

Case No. ██████████

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge (ALJ) 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 ██████████. ██████████, mother, appeared on behalf of the Appellant. ██████████, Appeals and Review Officer, represented the Department. ██████████, R.N./Private Duty Nursing Specialist, appeared as a witness on behalf of the Department.

**ISSUE**

Did the Department properly decrease the Appellant's private duty nursing (PDN) 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 a ██████ year-old Medicaid beneficiary with congenital central hyperventilation syndrome requiring tracheotomy and ventilator support. (Exhibit 1, page 40)
2. The Appellant had been approved for Medicaid-covered PDN care 12 hours per day. (R.N./Private Duty Nursing Specialist Testimony)
3. On ██████████, the Appellant's PDN provider sent a letter to the Department indicating there had been changes in the Appellant's condition since she started private duty nursing. The letter stated that the Appellant only used a ventilator while sleeping, attends school 4 hours per day, gets no tube feedings, and her condition is stable with no hospitalizations or

reported infections. The provider questioned whether the Appellant qualifies for 12 hours per day of PDN and indicated that the family would benefit from at least 8 hours per day of PDN. The plan of care and some assessment/clinical notes were attached. (Exhibit 1, pages 8 and 10-25)

4. On ██████████ the Appellant was hospitalized with a primary diagnosis of rule out seizures with long-term video EEG monitoring. (Exhibit 1, pages 36-39)
5. On █████ █████ █████, the Department issued a Notification of Reduction/Termination of Private Duty Nursing services to the Appellant indicating that her PDN hours would be decreased from 12 to 10 hours per day. (Exhibit 1, page 3)
6. On ██████████, a Request for Hearing was filed on the Appellant's behalf. (Exhibit 1, page 4)
7. On ██████████, the Appellant's PDN provider provided a letter clarifying the Appellant's health issues. The letter indicated that the Appellant is no longer on the vent 24 hours per day but is on it at all times while sleeping including naps and PRN when ill. The Appellant is not on a GT and eats a regular diet, but is at risk for aspiration due to the tracheostomy. The Appellant has been fighting pseudomonas on and off since ██████████ receives medication 28 days on, 28 days off, and is seeing an infectious disease doctor. The Appellant was admitted to the hospital on ██████████ for respiratory distress. The Appellant also attends school 5 days per week from 8:00 a.m. to 11:25 a.m. five days per week. More current assessment/clinical notes and the plan of care were attached. (Exhibit 1, pages 47-73)
8. On ██████████, the Appellant's pediatric pulmonologist provided a letter and the ██████████ visit note to support a continuation of PDN at 12 hours per day. (Exhibit 1, pages 40-43)

### **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.

The Children's Special Health Care Services program is established pursuant to 42 USC 700, *et seq.* It is administered in accordance with MCL 333.5805, *et seq.*

Children's Special Health Care Services (CSHCS) is a program within the Michigan Department of Community Health (MDCH) created to find, diagnose, and treat children in Michigan who have chronic illnesses or disabling conditions. CSHCS is mandated by the Michigan Public Health Code, Public Act 368 of 1978, in cooperation with the federal government under Title V of the Social Security Act and the annual MDCH Appropriations Act. CSHCS promotes the development of service structures that offer specialty health care for the CSHCS qualifying condition that is family centered, community based, coordinated, and culturally competent.

MDCH covers medically necessary services related to the CSHCS qualifying condition for individuals who are enrolled in the CSHCS Program. Medical eligibility must be established by MDCH before the individual is eligible to apply for CSHCS coverage. Based on medical information submitted by providers, a medically eligible individual is provided an application for determination of nonmedical program criteria.

An individual may be eligible for CSHCS and eligible for other medical programs such as Medicaid, Adult Benefits Waiver (ABW), Medicare, or MICHild. To be determined dually eligible, the individual must meet the eligibility criteria for CSHCS and for the other applicable program(s).

*Medicaid Provider Manual, Children's Special Health Care Services, Section 1, April 1, 2011*

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

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, PDN is a waiver service that may be covered for qualifying individuals enrolled in the Habilitation Supports Waiver or MI Choice 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, April 1, 2011.*

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 or more 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, April 1, 2011.*

The medical criteria for PDN services are provided in the Medicaid Provider Manual, Private Duty Nursing in Section 2.3.

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 eight 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 who is qualified to furnish such services and which 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.

**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 April 1, 2011*

A PDN provider is also required to report changes in a beneficiary's condition that warrant a decrease in the number of approved hours or a discontinuation of services. *Medicaid Provider Manual, Private Duty Nursing, Section 2.6 April 1, 2011.*

In this case, there is no dispute that the Appellant meets the eligibility criteria for PDN. Rather the issue is decrease from 12 hours of PDN services per day to 10 hours of PDN services per day. This decrease was prompted by a letter from the Appellant's PDN provider indicating there had been changes in the Appellant's condition since she started private duty nursing. The letter stated that the Appellant only used a ventilator while sleeping, attends school 4 hours per day, gets no tube feedings, and her condition is stable with no hospitalizations or reported infections. The provider questioned whether the Appellant qualifies for 12 hours per day of PDN and indicated that the family would benefit from at least 8 hours per day of PDN. The plan of care and some assessment/clinical notes were attached. (Exhibit 1, pages 8 and 10-25)

The Department reviewed this information and determined that there have been improvements in the Appellant's condition and her PDN hours should be reduced to 10 hours per day. Examples of improvements included the Appellant using the ventilator less and attending school. The flow sheets were also reviewed, which showed how often the Appellant was suctioned and when she was on the ventilator. (R.N./Private Duty Nursing Specialist Testimony)

The Appellant's mother disagrees with the reduction and testified that the Appellant needs the hours. The Appellant's mother explained that the Appellant's diagnosis of congenital central hyperventilation syndrome is not something that only affects her while asleep. She stated that the Appellant can stop breathing at any time; therefore, she must have her ventilator with her at all times. The Appellant's mother testified that the woman whose name is on the ██████████, letter to the Department, only saw her twice, had only spent 15 minutes with the Appellant and stated that she did not write this letter, but is no longer with the company. The Appellant's mother also indicated that the PDN provider has not been giving complete information to the Department and one of the issues they are working on is writing better notes to document what is going on with the Appellant. Additionally, the Appellant's mother testified that she can not go two nights in a row without sleep to care for the Appellant herself as this has led to several close calls with the Appellant in the past. (Mother Testimony)

Based on the documentation submitted to the Department in ██████████, there was a change in the Appellant's medical condition or needs since she started receiving PDN. This is further supported by the ██████████, letter from the provider clarifying the Appellant's health issues. Specifically, the Appellant is no longer on the ventilator 24 hours a day, rather when sleeping (including naps) and PRN when ill; she no longer has a GT, rather she eats a regular diet which is tolerated well but there is a risk for aspiration; and she attends school five days per week from 8:00 a.m. to 11:25 a.m. (Exhibit 1, page 44) The Department authorizes PDN hours based on the Appellant's needs for skilled nursing services. Part of the Appellant's need for skilled nursing is due to her ventilator requirement, which has decreased. Additionally, eating a regular diet instead of receiving nutrition through tube feedings and school attendance support the decreased need for PDN hours. The Department's determination to decrease the Appellant's PDN hours from 12 hours per day to 10 hours per day is supported by the available information. This does not imply that the Appellant does not need assistance or would never be eligible for an increase in PDN hours. The Appellant can always submit a request to the Department for an increase in PDN hours with supporting documentation if there is a change in her medical condition or needs requiring additional skilled nursing services.

### **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 based on the available information.



[REDACTED]  
Docket No. 2011-33433 PAC  
Decision and Order

**IT IS THEREFORE ORDERED** that:

The Department's decision is **AFFIRMED**.

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Colleen Lack  
Administrative Law Judge  
for Olga Dazzo, Director  
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 9/13/2011

**\*\*\* NOTICE \*\*\***

The Michigan Administrative Hearing System for the Department of Community Health 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 Michigan Administrative Hearing System for the Department of Community Health 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.