

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

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

Docket No. 2012-24634 PAC

██████████,

██████████

██████████

Appellant

_____ /

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 ██████████. ██████████ represented the Appellant. ██████████ Appeals Review Manager, represented the Department. Her witness was ██████████ MDCH/PRD.

ISSUE

Did the Department properly determine that Appellant does not meet the eligibility criteria for private duty nursing (PDN) services?

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 cerebral palsy, congenital myopathy, tracheostomy and is ventilator dependant. (Exhibit A)
2. The Appellant resides with his parents. (uncontested)
3. The Appellant has a Bivona ██████ trach. He requires suctioning ██████ times per day.
4. The Appellant requires monitoring for dryness. His trach is changed daily by his mother, who is a nurse.
5. The Appellant is fed through a Mic-Key button in place in his abdomen.

6. The Appellant attends school full time. He has a nurse while at school.
7. The Appellant has no use of his upper extremities.
8. The Appellant was adopted at age █████ years old. He has had PDN for years in the past.
9. The Appellant and his family moved to a rural location in the ██████████ where PDN was not available.
10. The Appellant had PDN discontinued while residing in the Upper Peninsula.
11. The Appellant's mother is a nurse. She provided the nursing care required during the time he was residing in the ██████████.
12. The Appellant and his family have/are returning to the ██████████ where PDN is available. He seeks return of the service.
13. The Appellant sought approval for Private Duty Nursing services on or about ██████████.
14. The request was reviewed and denied on ██████████.
15. At hearing, the Department stipulated the Appellant meets Criteria I as set forth in the Medicaid provider manual standards of coverage for PDN.
16. On ██████████, the request for hearing was received by the Michigan Administrative Hearings System (MAHS) for the Department of Community Health.

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. Title V of the Social Security Act, Michigan Public Act 368 of 1978, and the annual MDCH Appropriations Act mandate CSHCS. 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 non-medical program criteria.

An individual may be eligible for CSHCS and eligible for other medical programs such as Medicaid, Adult Benefit 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 (MPM), Children's Special Health
Care Services, § 1, January 1, 2012, page 1

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

[] MEDICAL CRITERIA

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 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.

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.

MPM, § 2.3, Medical Criteria/PDN, January 1, 2012, pages 9-11

1.4.A. DOCUMENTATION REQUIREMENTS

The following documentation is required for all PA requests for PDN services and must accompany the MSA-0732:

- Most recent signed and dated nursing assessment completed by a registered nurse;
- Nursing notes for two (2) four-day periods, including one four-day period that reflects the most current medically stable period and another four-day period that reflects the most recent acute episode of illness related to the PDN qualifying diagnosis/condition;
- Most recent updated POC signed and dated by the ordering/managing physician that supports the skilled nursing services requested;

The POC must include:

- Name of beneficiary and Medicaid ID number;
- Diagnosis(es)/presenting symptom(s)/condition(s);
- Name, address, and telephone number of the ordering/managing physician;
- Frequency and duration, if applicable, of skilled nursing visits, and the frequency and types of skilled interventions, assessments, and judgments that pertain to and support the PDN services to be provided and billed;
- Identification of technology-based medical equipment, assistive devices (and/or appliances), durable medical equipment, and supplies;
- Other services being provided in the home by community-based entities that may affect the total care needs;
- List of medications and pharmaceuticals (prescribed and over-the-counter);
- All hospital discharge summaries for admissions related to the PDN qualifying diagnosis/condition within the last authorization period;
- Statement of family strengths, capabilities, and support systems available for assisting in the provision of the PDN benefit (for renewals, submit changes only).
- Other documentation as requested by MDCH.

1.4.B. BENEFICIARY ELIGIBILITY

Approval of the MSA-0732 confirms that the service is authorized for the beneficiary. The approval does not guarantee that the beneficiary is eligible for Medicaid. If the beneficiary is not eligible on the date of service, MDCH will


not reimburse the provider for services provided and billed. To assure payment, the provider must verify beneficiary eligibility monthly at a minimum.

MPM Section 1.4.A
Version date January 1, 2012

In this case, the Department reviewer determined that the Appellant met Criteria I set forth above. She testified at hearing about the criteria set forth in Criteria II. She stated the documentation provided did not satisfy the Criteria II. She specified the documentations show his health is stable. He did have an eventful winter which involved a trip to the emergency room due to his tracheostomy. When asked about whether the Appellant met Criteria III the Department witness responded by stating his health is stable and he attends school ██████████. She further stated the documentation lists his activities. She said he has some independence despite having a ventilator and tracheostomy. The Department witness stated the interventions required by the Appellant are being performed by his parent. The department witness, in response to testimony from the Appellant's mother, stated there is no documentation of the exact nature of the interventions and assessments she does. She stated the Appellant's representative described more involved assessments and interventions than the documentation submitted could demonstrate to her. She stated she is required to rely on the documentation submitted to make the determinations.

The Appellant's mother stated the Appellant has received PDN in the past, for years. She said when they moved to the ██████████ none was available at home so she did it. She stated she is a nurse and has been providing the assessments and interventions needed. She did indicate a well trained parent could perform suctioning, however, he requires assessments and interventions beyond suctioning. She further stated he has a nurse at school. She stated she has not kept a log of the assessments and interventions she does because she has been doing it on her own, thus was not required to. She asserted all children who are ventilator dependant and with tracheostomys are qualified for PDN because they must have someone to assess and intervene on their behalf.

This ALJ has reviewed the medical criteria set forth in the Medicaid Provider manual. It appears that when consideration and weight is given to the uncontested, credible testimony from the Appellant's representative/mother, that he meets Criteria I and III. There is no documentation supporting the testimony about the interventions and assessments undertaken on his behalf, thus the department was unable to reach this conclusion when they reviewed the request for prior authorization. The Department did rely on the documentation submitted at the time prior authorization was requested, thus the determination made at that time is supported by the evidence they used. The Appellant is strongly encouraged to reapply with updated documentation that demonstrates the testimony provided at hearing, as the health of safety of the Appellant is of utmost concern to this ALJ.


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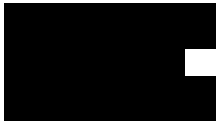
The Administrative Law Judge, based on the above findings of fact and conclusions of law, must find that the Department was within their rights to deny the Appellant's request for PDN based upon a lack of documentation supporting the fact that he meets medical Criteria I and III.

IT IS THEREFORE ORDERED that:

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

Jennifer Isiogu
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: ___4-11-12_____

***** 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.