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) 373-4147

IN THE MATTER OF:

[redacted],

Docket No. 2013-879 PA[1]
Case No. [redacted]

Appellant.
_____/

DECISION AND ORDER

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

After due notice, a hearing was held on [redacted]. [redacted], Appellant's mother and legal guardian, appeared and testified on Appellant's behalf. Appellant; [redacted], Appellant's father; [redacted], an administrator at [redacted]; [redacted], Appellant's supports coordinator; and [redacted], a nurse; also appeared as witnesses for Appellant. [redacted], Appeals Review Officer, represented the Department of Community Health. [redacted], registered nurse and private duty nursing specialist, appeared as a witness for the Department.

ISSUE

Did the Department properly deny Appellant's prior authorization request for 16 hours of private duty nursing (PDN) per day and, instead, authorize a gradual reduction of PDN services with Appellant ultimately receiving 12 hours of PDN per day?

FINDINGS OF FACT

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

1. Appellant is a [redacted] year-old male who is a quadriplegic and vent dependent. (Respondent's Exhibit A, page 58; uncontested testimony during hearing).

2. Appellant's mother is his partial legal guardian. (Respondent's Exhibit A, pages 6-7).

3. Appellant has been receiving PDN through the Department. (Uncontested

[1] This matter was coded as a Home Help Services (HHS) case originally, but is subsequently became clear that this matter involves the partial denial of Appellant's prior authorization request for private duty nursing and should be recoded as a PA case.

testimony during hearing).

4. On or about [redacted], the Department received a prior authorization request filed on behalf of Appellant and requesting a renewal of his PDN services. Specifically, Appellant sought 496 hours of PDN per month for the time period of [redacted] through [redacted]. (Respondent's Exhibit A, pages 37-56).

5. That request was approved as amended by the Department. The hours were rewritten as 16 hours per day and the time period was changed to [redacted] to [redacted]. (Respondent's Exhibit A, page 37).

6. On or about [redacted], the Department received another prior authorization request filed on behalf of Appellant and requesting a renewal of his PDN services. Specifically, Appellant sought 496 hours of PDN per month for the time period of [redacted] through [redacted]. (Respondent's Exhibit A, pages 57-75).

7. That second request was approved as amended by the Department on or about [redacted]. The hours were rewritten as 16 hours per day and the time period was changed to [redacted] through [redacted]. (Respondent's Exhibit A, page 57).

8. In [redacted], the Department received a new prior authorization request filed on behalf of Appellant and requesting a renewal of his PDN services. Specifically, Appellant sought 496 hours of PDN per month for the time period of [redacted] through [redacted]. (Respondent's Exhibit A, pages 76-95).

9. That third request was approved as amended by the Department. Specifically, the Department's approval provided that there would also be a gradual reduction in hours:

> Transitional reduction in hours as follows: 16 hours per day from [redacted] thru [sic] [redacted]; 14 hours per day from [redacted] thru [sic] [redacted], then 12 hours per day from [redacted] thru [sic] 1[redacted]. [Respondent's Exhibit A, page 18.]

10. Appellant and his representative received written notice of the planned reduction in services, but did not appeal that negative action at that time. (Testimony of Appellant's representative).

11. On or about [redacted], the Department received another prior authorization request filed on behalf of Appellant and requesting a renewal of his PDN services. Specifically, Appellant sought 496 hours of PDN per month for the time period of [redacted] through [redacted]. (Respondent's Exhibit A, pages 20-36).

12. The Department authorized PDN, but its notice again indicated how Appellant's services would be transitioned to the lower amount over the next few months as described in the earlier approval. (Respondent's Exhibit A, pages 18-20).

13. On [redacted], the Department received a Request for Hearing filed on behalf of Appellant in this matter. (Respondent's Exhibit A, pages 5-7).

CONCLUSIONS OF LAW

The Michigan Medicaid Provider Manual addresses prior authorization request for PDN services and, in the pertinent part, states:

> **1.4 PRIOR AUTHORIZATION**
>
> PDN services must be authorized by the Program Review Division, the Children's Waiver, or the Habilitation Supports Waiver before services are provided. (Refer to the Directory Appendix for contact information.) Prior authorization of a particular PDN provider to render services considers the following factors:
>
> - Available third party resources.
> - Beneficiary/family choice.
> - Beneficiary's medical needs and age.
> - The knowledge and appropriate nursing skills needed for the specific case.
> - The understanding of the concept and delivery of home care and linkages to relevant services and health care organizations in the area served.
>
> The Private Duty Nursing Prior Authorization – Request for Services form (MSA-0732) must be submitted when requesting PDN for persons with Medicaid coverage before services can begin and at regular intervals thereafter if continued services are determined to be necessary. A copy of the form is provided in the Forms Appendix and is also available on the MDCH website. (Refer to the Directory Appendix for website information.) This form is not to be used for beneficiaries enrolled in, or receiving case management services from, the Children's Waiver,

Habilitation Supports Waiver, or MI Choice Waiver. Private Duty Nursing is not a benefit under CSHCS. Individuals with CSHCS coverage may be eligible for PDN under Medicaid.

The MSA-0732 must be submitted every time services are requested for the following situations:

- for initial services when the beneficiary has never received PDN services under Medicaid, such as following a hospitalization or when there is an increase in severity of an acute or chronic condition;
- for continuation of services beyond the end date of the current authorization period (renewal);
- for an increase in services; or
- for a decrease in services.

Following receipt and review of the MSA-0732 and the required documentation by the Program Review Division, a Notice of Authorization is sent to the PDN provider and beneficiary or primary caregiver, either approving or denying services, or requesting additional information. The provider must maintain this notice in the beneficiary's medical record. For services that are approved, the Notice of Authorization will contain the prior authorization number and approved authorization dates. It is important to include this PA number on every claim and in all other communications to the Program Review Division.

If a beneficiary receiving PDN continues to require the services after the initial authorization period, a new MSA-0732 must be submitted along with the required documentation supporting the continued need for PDN. This request must be received by the Program Review Division no less than 15 business days prior to the end of the current authorization period. Failure to do so may result in a delay of authorization for continued services which, in turn, may result in delayed or no payment for services rendered without authorization. The length of each subsequent authorization period will be determined by the Program Review Division and will be specific to each beneficiary based on several factors, including the beneficiary's medical needs and family situation.

> If during an authorization period a beneficiary's condition changes warranting an increase or decrease in the number of approved hours or a discontinuation of services, the provider must report the change to the Program Review Division. (Refer to the Directory Appendix for contact information.) It is important that the provider report all changes as soon as they occur, as well as properly updating the plan of care.
>
> The request to increase or decrease hours must be accompanied by an updated and signed POC; and documentation from the attending physician addressing the medical need if the request is for an increase in PDN hours.
>
> Often the request to begin services will be submitted by a PDN agency or individual PDN; however, a person other than the PDN provider (such as the hospital discharge planner, CSHCS case manager, physician, or physician's staff person) may submit the MSA-0732. When this is the case, the person submitting the request must do so in consultation with the PDN agency or individual PDN who will be assuming responsibility for the care of the beneficiary.
>
> If services are requested for more than one beneficiary in the home, a separate MSA 0732 must be completed for each beneficiary.
>
> The PA number is for private duty nursing only. Any CMHSP prior authorized respite services must be billed to the authorizing CMHSP. [MPM, July 1, 2012 version, PDN Chapter, Section 1.4.]

In determining the amount of PDN, the MPM states in part:

> **2.4 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 . . . [MPM, April 1, 2012 version, PDN Chapter, Section 2.4.]

With respect to the Intensity of Care Categories, Section 2.4 of the PDN Chapter of the MPM identifies three categories. The first is the 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.

The second category is the 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.

The third category is the 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.

Those categories help determine the appropriate range of nursing hours that can be authorized under the Medicaid PDN benefit and define the benefit limitations for beneficiaries. *See* MPM, April 1, 2012 version, PDN Chapter, Section 2.4.

Additionally, the MPM also requires that a detailed nursing log be kept if PDN is approved and care initiated

> **1.8 SERVICE LOG**
>
> If PDN is prior approved and care is initiated, a detailed log for each date of service must be maintained.
>
> The service log must be beneficiary specific, with the beneficiary's name and birth date in the header portion of the document. In cases where the nurse is caring for two or more beneficiaries in the same home, a separate service log for each beneficiary must be maintained. This log must be kept in the beneficiary's record . . . [MPM, April 1, 2012 version, PDN Chapter, Section 1.8.]

Here, the Department through [redacted] decided to partially deny Appellant's PA request and only authorize 12 hours of PDN a day after finding that the documentation, notes and nursing logs submitted in conjunction with that request failed to justify 16 hours of PDN. In particular, [redacted] noted that flow sheets regarding Appellant's suctioning needs indicated that, at various times, Appellant requires zero, one or two interventions for suctioning per hour, but that overall, he did not require an intervention by a licensed nurse at least one time per hour. (Respondent's Exhibit A, pages, 39, 41, 43, 45, 47, 49, 51, 53). [redacted] also testified that, given those needs, Appellant's Intensity of Care Category is "Medium" as defined by the MPM. (MPM, April 1, 2012 version, PDN Chapter, Section 2.4). Additionally, given that category and the fact that Appellant's two caregivers both work full-time, the MPM provides that Appellant should be authorized 6-12 hours of PDN per day. (MPM, April 1, 2012 version, PDN Chapter, Section 2.4). [redacted] further testified that, while Appellant clearly has a significant need for assistance, not all of those needs required skilled nursing. For example, while Appellant requires assistance with all Activities of Daily Living (ADLs) and a private duty may assist with those activities while he or she is there, that assistance does not require skilled nursing and cannot justify the authorization of PDN.

In response, Appellant's representative and other witnesses testified that the private duty nurses' assessments and interventions in this case include much more than just suctioning. The nurses also maintain Appellant's airways, assess his pain, take care of his tracheostomy, feed him through his g-tube, perform wound care, and insert straight catheters. Appellant's representative did, however, acknowledge that the family can perform suctioning.

Appellant's witnesses also credibly testified that the log sheets and documentation submitted along with the renewal request do not reflect all that the nurses do. In particular, [redacted] testified that the nature of sheets causes them to be incomplete

while [redacted] testified that half of the logs are from Appellant's best days. Overall, Appellant's witnesses testified that Appellant requires hourly interventions from PDN. However, while Appellant's witnesses testified that the documentation submitted along with the renewal request does not reflect all that nurses do for Appellant, that documentation is all the Department had to rely on in making its determination. This Administrative Law Judge is also limited to reviewing the Department's decision in light of the information available at the time it made that decision.

Appellant's representative also testified that Appellant requires more care and the family's stress levels have increased since the partial denial in this case and that, in particular, Appellant has increased suctioning needs. Appellant's representatives and witnesses also noted that Appellant's tracheostomy has changed and that they received more help from their family in the past. However, once again, this Administrative Law Judge is limited to reviewing the Department's decision in light of the information it had at the time it made that decision. To the extent Appellant's circumstances have changed since the change to 12 hours of PDN per day, Appellant would have to raise those changes in a new request for services. Appellant's representative indicated during the hearing that she has already filed such a request.

With respect to the decision that is before this Administrative Law Judge, Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in partially denying his PA request. Here, Appellant failed to meet that burden. The documentation submitted along with the request for PDN did not justify the amount of services sought by Appellant and rather reflected a lessened need for suctioning. Given the evidence that was available, the Department's decision must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly denied Appellant's prior authorization request for 16 hours of PDN per day and, instead, authorized a gradual reduction of PDN services with Appellant ultimately receiving 12 hours of PDN per day.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Steven Kibit

Steven Kibit
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

[redacted]
Docket No. 2013-879 PA
Decision and Order

cc: [redacted]

Date Mailed: 4/10/2013

***** NOTICE *****

The Michigan Administrative Hearing System 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 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.