

**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:

Docket No. 2013-44417 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 ██████████. ██████████ mother, appeared on behalf of the Appellant. ██████████ RN, ██████████ appeared as a witness for the Appellant. ██████████, Appeals 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 deny the Appellant's request for ██████ hour 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 a complex medical history including Miller-Dieker Syndrome, micro deletions, seizure disorder, chronic lung disease, recurrent pneumonia, asthma, reactive airway disease, chronic respiratory failure, G tube feedings and tracheostomy dependence. (Exhibit 1, pages 12 and 16-21)
2. On ██████████, the Appellant was approved for Medicaid-covered PDN care. (Exhibit 1, page 37)
3. The Appellant's PDN authorization has been an average of ██████ hours per day since ██████████. (Exhibit 1, pages 23-26)

4. On ██████████, the Appellant's PDN provider sent fax on behalf of the Appellant's mother requesting ██████ hour care. The PDN provider indicated there were no changes in the Appellant's care since the prior authorization and further that "Homecare management denies an need for ██████ hour care." (Exhibit 1, page 4)
5. On ██████████, the Department issued a Notice of Denial of PDN Services to the Appellant stating the request for increased hours, specifically ██████ hour PDN care, was denied under the Medicaid Provider Manual ("MPM") policy. Cited portions of the MPM policy addressed: benefit limitations, including that the primary caregiver must provide a monthly average of at least ██████ hours of care during a typical day; prior authorization, indicating the PDN provider must report changes that warrant an increase, decrease, or discontinuation of PDN hours to the Department as soon as they occur and should be accompanied with an updated plan of care and documentation from the attending physician addressing medical needs if the request is for an increase in PDN; and the exception process as well as determining intensity of care and maximum amount of PDN, addressing temporary, time limited exceptions that require prior authorization and are based on medically necessity. (Exhibit 1, pages 5-7)
6. On ██████████, the Appellant's hearing request was received by the Michigan Administrative Hearing System. (Exhibit 1, page 3)

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, 2013

The Department's Medicaid Provider Manual addresses Private Duty Nursing (PDN) :

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.

1.7 BENEFIT LIMITATIONS

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.

Except in emergency circumstances, Medicaid does not approve more than the maximum hours indicated in the guide.

2.5 EXCEPTION PROCESS

Because each beneficiary and his family are unique and because special circumstances arise, it is important to maintain an exception process to ensure the beneficiary's safety and quality of care. PDN services that exceed the beneficiary's benefit limitation, as established by the Decision Guide, must be prior authorized by the appropriate Medicaid case management program. Limited authority to exceed the published PDN benefit limitations may be granted on a time-limited basis as detailed below.

The beneficiary or his primary care giver must initiate the request for an exception. The applicable Medicaid case management program's representative is responsible for facilitating the request and documenting the necessity for an exception. Factors underlying the need for additional PDN must be identified in the beneficiary's POC, which must include strategies directed toward resolving the factors necessitating the exception, if applicable. Documentation must substantiate all of the following:

- Current medical necessity for the exception;
- Current lack of natural supports required for the provision of the needed level of support; and
- Additional PDN services are essential to the successful implementation of the beneficiary's written plan of care, and are essential to maintain the

beneficiary within the least restrictive, safe, and humane environment suitable to his condition.

Exceptions are time-limited and must reflect the increased identified needs of the beneficiary.

Consideration for an exception is limited to situations outside the beneficiary's or family's control that place the beneficiary in jeopardy of serious injury or significant deterioration of health status. Exceptions may be considered for either of the following general situations:

<p>A temporary alteration in the beneficiary's care needs following a hospitalization, resulting in one or both of the following:</p>	<p>The temporary inability of the primary caregiver(s) to provide required care as the result of one of the following:</p> <p>("Inability" is defined as the caregiver is either unable to provide care or is prevented from providing care.)</p>
<ul style="list-style-type: none"> • A temporary increase in the intensity of required assessments, judgments, and interventions. • A temporary need for additional training to enable the primary caregiver(s) to identify and meet the beneficiary's care needs. <p>The total number of additional PDN hours cannot exceed two hours per day, for a maximum of six months.</p>	<ul style="list-style-type: none"> • An acute illness or injury of the primary caregiver(s). The total number of additional PDN hours cannot exceed two hours per day for the duration of the caregiver's inability, not to exceed six months. In the event there is only one caregiver living in the home and that caregiver is hospitalized, a maximum of 24 hours per day can be authorized for each day the caregiver is hospitalized. • The death of the primary caregiver(s) or an immediate family member. "Immediate family member" is defined as the caregiver's spouse, partner, parent, sibling, or child. The maximum number of hours

	<p>allowable under this exception criterion is 24 hours per day for a maximum of seven days.</p> <ul style="list-style-type: none">• The home environment has been determined to be unstable, as evidenced by DHS protective or preventive services involvement. <p>The written POC and community-based care coordination activities must include strategies directed toward stabilizing service supports and/or the family situation. The maximum number of hours varies by the beneficiary's Intensity of Care category: High = maximum of 18 hours per day; Medium = maximum of 14 hours per day; Low = maximum of 10 hours per day. The length of time for this exception is three months or the time needed to stabilize service supports and/or family situation, whichever is less. A one-time extension of up to three months may be made if there is documented progress toward achieving the stabilized home environment.</p>
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*Medicaid Provider Manual, Private Duty Nursing,
April 1, 2013, Pages 4, 7 and 12-14.*

In this case, there was no dispute that the Appellant meets the eligibility criteria for PDN. Rather, the issue is the denial of the Appellant's mother's request for █████ hour PDN services.

The Appellant's mother disagrees with the denial and explained that she has exhausted every possible other resource. The Appellant's mother stated she would be happy with a lesser increase, even █████ hours, but requested █████ hours in hopes the Department

would settle in between. The Appellant's mother explained that the Appellant's health is no longer stable, the Appellant stops breathing nightly and her oxygen level gets dangerously low. The Appellant's mother does not have a chance to go to bed. The Appellant's mother also asserted that the PDN provider does not allow for enough detailed charting to support a request for an increase in PDN hours. (Mother Testimony)

The RN from ██████████ testified that she tries to chart more in depth, but the PDN provider agency only wants narrative charting by exception. This RN described some of the Appellant's care, parts of which would require medical training and qualifications. (RN Munson Home Health Testimony)

The prior authorization request at issue was specifically for █████ hour PDN services. (Exhibit 1, page 4) Based on the documentation submitted to the Department, there was no change in the Appellant's care since the previous request for authorization to support this request for an increase in PDN hours. (Exhibit 1, page 4) Additionally, the Department's policy is clear, there are limitations regarding the amount of PDN hours that can be authorized and the primary caregiver must provide a monthly average of at least █████ hours of care during a typical day. While the policy allows for exceptions based on medical necessity, these are temporary, time limited exceptions. The policy does not allow for █████ hour PDN services on an ongoing basis. Lastly, the PDN services provider denied the need for █████ hour care. (Exhibit 1, page 4)

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied the Appellant's request for █████ hour PDN services based on the available information.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

/s/
Colleen Lack
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: ██████████

Date Mailed: ██████████

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CL/db

cc: [REDACTED]

***** 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.