

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:

██████████,

Appellant

_____ /

Docket No. 2013-53234 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., and upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, Appellant's father, appeared and testified on Appellant's behalf. Appellant also testified during the hearing. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Registered Nurse and Private Duty Nursing Specialist, appeared as a witness on behalf of the Department.

ISSUE

Did the Department properly deny in part the Appellant's request for additional 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 an ██████ year-old Medicaid beneficiary who is a quadriplegic. (Petitioner's Exhibit 1, page 1).
2. Appellant's father is his primary caregiver and Appellant has also been receiving twelve (12) hours of PDN per day. (Respondent's Exhibit A, page 11; Testimony of Appellant's representative).
3. On or about ██████████, the Department received a request for a temporary increase in PDN hours. Accompanying that request was (1) a note verifying that Appellant's father had been treated at ██████████ between ██████████ and ██████████; and (2) a document from a physician stating that, due to a right knee replacement on ██████████, Appellant's father was being placed on restrictions. (Respondent's Exhibit A, pages 9-10; Testimony of ██████████).

4. Specifically, the identified restrictions were:

No stairs, squatting, lunging. No lifting more than 25 lbs. No weight bearing more than 35 minutes at a time. Unable to care for his disabled son x 3 months[.] [Respondent's Exhibit A, page 10.]

5. On ██████████, the Department issued a Notification of Authorization to the Appellant stating the request for additional PDN services was granted. (Respondent's Exhibit A, pages 7-8).

6. Specifically, the Notice of Authorization provided:

Documentation has been received indicating an inpatient event of Primary caregiver due to surgical intervention. A temporary increase in hours is granted as follows: 14 hours per day from ██████████; 12 hours per day from ██████████. [Respondent's Exhibit A, page 7.]

7. However, while the Notice of Authorization stated in that the temporary increase was between ██████████ and ██████████, that start date was a misprint and, as stated elsewhere on the notice, the temporary increase was to start ██████████. (Respondent's Exhibit A, page 7; Testimony of ██████████).
8. On ██████████, the Michigan Administrative Hearing System received the Appellant's hearing request. (Petitioner's Exhibit 1, pages 1-3).

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 Department's Medicaid Provider Manual (MPM)¹, addresses Private Duty Nursing (PDN):

If during an authorization period a beneficiary's condition changes warranting an increase or decrease in the number

¹MPM, April 1, 2013 version, PDN Chapter, pages 4, 7, 12-14.

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:

A temporary alteration in the beneficiary's care needs following a hospitalization, resulting in one or both of the following:	The temporary inability of the primary caregiver(s) to provide required care as the result of one of the following: ("Inability" is defined as the caregiver is either unable to provide care or is prevented from providing care.)
<ul style="list-style-type: none">• A temporary increase in the intensity of required assessments, judgments, and interventions.• A temporary need for	<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

<p>additional training to enable the primary caregiver(s) to identify and meet the beneficiary's care needs.</p> <p>The total number of additional PDN hours cannot exceed two hours per day, for a maximum of six months.</p>	<p>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.</p> <ul style="list-style-type: none">• 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 allowable under this exception criterion is 24 hours per day for a maximum of seven days.• 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</p>
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	extension of up to three months may be made if there is documented progress toward achieving the stabilized home environment.
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In this case, there was no dispute that the Appellant meets the eligibility criteria for PDN. Rather, the issue is the partial denial of Appellant's request for a temporary increase in PDN services.

As discussed above, in response to Appellant's request and documentation, the Department authorized a temporary increase of PDN for three months. Appellant's PDN was to be increased from 12 hours a day to 14 hours per day for that period. Appellant and his representative argue that the PDN hours should have been increased to 16 hours per day. Appellant bears the burden of proving by a preponderance of the evidence that the Department erred by only authorizing a temporary increase to 14 hours per day.

Here, Appellant and his representative have failed to meet that burden of proof. Appellant's representative testified that, following his surgery, he could not walk at all; was on a significant amount of medications; and could not move his knee at all. However, those specific medical issues were not identified in the documents submitted to the Department and the only restrictions identified involved using stairs; squatting; lifting; and weight-bearing. The doctor did generally find that Appellant's father was unable to care for his son for three months, but he did not expressly explain why and the restrictions that were identified do not suggest that Appellant's father could not care for his son at all. The Department must make its decision in light of what was submitted and, in light of the limited restrictions identified in this case, it properly determined that there should only be an increase of 2 hours a day for three months.

[REDACTED]
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DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied in part Appellant's request for additional private duty nursing services.

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

Date Signed: 8/9/2013

Date Mailed: 8/9/2013

[REDACTED]
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.