

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. 2013-61734 PAC

██████████,

██████████

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 a request for a hearing filed on behalf of the minor Appellant.

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

ISSUE

Did the Department properly deny Appellant's request 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 an ██████-year-old Medicaid beneficiary who has been diagnosed with a history of CHARGE syndrome; Eustachian tube dysfunction; bilateral hearing loss; tetralogy of fallot; cerebral palsy; seizure disorder; chronic respiratory insufficiency; gastroesophageal reflux disease; obstructive airway; and developmental delays due to hearing loss. (Respondent's Exhibit A, pages 9, 13, 16, 28, 34).
2. The Department received a request for private duty nursing (PDN) services for Appellant in late January or early ██████████ (Testimony of ██████████).

3. On [REDACTED] the Department sent Appellant a Request for Additional Information. Specifically, the request indicated that “medical documentation supporting the request must be included for consideration.” (Respondent’s Exhibit A, page 5).
4. Some information was later received, but, according to the Department’s witness, it was insufficient to allow the Department to make a determination. (Testimony of [REDACTED]).
5. Accordingly, the Department sent Appellant another Request for Additional Information on [REDACTED] (Respondent’s Exhibit A, page 6).
6. In that second request for information, the Department stated:

Michigan Medicaid has received your prior authorization request for Private Duty Nursing for the above beneficiary. Additional information has also been received. However, in order to process this request, the Department needs the following information:

Submitted documentation must reflect medical criteria as stated in policy in the Private Duty Nursing Chapter, Section 2.3 of the Medicaid Provider Manual.

- In this case, please submit a statement or rationale based on Medical Criteria stated in the above policy. The submitted Plan of Care (POC), Nursing Assessment and Nursing Notes do not clarify the PDN request.
- Section 2.4: Determining Intensity of Care and Maximum Amount of PDN in the Private Duty chapter may provide more specific guidelines and assist in clarifying this request.

Respondent’s Exhibit A, page 6

7. Additional information was received on Ju [REDACTED] and subsequently reviewed by the Department. (Respondent’s Exhibit A, page 7; Testimony of [REDACTED]).

8. On ██████████ the Department sent Appellant a Notification of Denial of Private Duty Nursing Services. (Respondent's Exhibit A, pages 7-8).
9. That notice stated Appellant's request was denied and that:

The policy this denial is based on is Section 2.3 MEDICAL CRITERIA of the Private Duty Nursing Chapter of the Medicaid Provider Manual, which indicates:

To qualify for PDN, the beneficiary must meet the medical criteria of **either** 1 or III . . . **or** II and III.

Medical review of submitted documentation has determined that the beneficiary does not meet medical criteria I and III or II and III for authorization of PDN hours, at this time. However, the beneficiary status may meet criteria in the future; re-application may be made at that time.

Respondent's Exhibit A, page 7

10. On ██████████ the Michigan Administrative Hearing System (MAHS) received the request for hearing filed on behalf of Appellant. (Respondent's Exhibit A, page 4).

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.

This case involves the denial of a request for private duty nursing (PDN) and the Department's Medicaid Provider Manual (MPM) addresses such services:

SECTION 1 – GENERAL INFORMATION

This chapter applies to Independent and Agency Private Duty Nurses.

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.

1.1 DEFINITION OF PDN

Private Duty Nursing is defined as nursing services for beneficiaries who require more individual and continuous care, in contrast to part-time or intermittent care, than is available under the home health benefit. These services are provided by a registered nurse (RN), or licensed practical nurse (LPN) under the supervision of an RN, and must be ordered by the beneficiary's physician. Beneficiaries requiring PDN must demonstrate a need for continuous

skilled nursing services, rather than a need for intermittent skilled nursing, personal care, and/or Home Help services. The terms "continuous" and "skilled nursing" are further defined in the Medical Criteria subsection for beneficiaries under age 21.

* * *

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, July 1, 2013 version
Private Duty Nursing Chapter, pages 1, 9-11*

Here, after some initial confusion, the Department's witness acknowledged that Appellant meets Medical Criteria I. (Testimony of ██████████). Accordingly, whether or not Appellant qualifies for PDN services depends on whether he satisfies Medical Criteria III.

With respect to that question, Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in finding that he did not meet Medical Criteria III and therefore did not qualify for PDN services.

Appellant's representative/mother, who is not a trained nurse, provides the majority of Appellant's care. (Testimony of Appellant's representative). According to the Department's witness, the fact that Appellant's mother can care for him weighs against finding that Appellant requires continuous skilled nursing care on a daily basis or is in need of PDN hours because his services could be provided by his mother, or another non-skilled assistant, and therefore do not require a professional medical judgment from licensed providers. (Testimony of Primes-Heard).

Nevertheless, Appellant has been receiving some PDN as respite for his caregiver. For example, starting ██████████ Appellant received ██████ hours of PDN over ██████ days, to be used at the family's discretion. (Respondent's Exhibit A, page 25)

Moreover, it is undisputed that suctioning is occurring (Respondent's Exhibit A, pages 36, 41-42, 45-46) and "suctioning of the airway" is specifically identified as skilled nursing within Medical Criteria III.

What is disputed, however, is the justification for the suctioning and whether Appellant needs PDN services. According to the Department's witness, there is no medical basis or evidence in the information submitted suggesting that Appellant's condition is compromised to the degree that the PDN would be necessary in the home setting.

Appellant's representative first points to Appellant's hospital visits as a justification for PDN and the Department's witness does appear mistaken about the nature of the hospital visits described in the submitted documents. Rather than be limited to just issues with Appellant's ears, the record also reflects problems with acute bronchitis and pneumonia, as well as a history of heart surgery. (Respondent's Exhibit A, pages 9-20, 26-33).

According to Appellant's representative, those medical issues in turn reflect Appellant's breathing difficulties and need for PDN. Additionally, Appellant's representative testified that Appellant has also undergone open-heart surgery and the exposure of his lungs/airways has also increased his need for PDN. (Testimony of Appellant's representative).

However, whatever issues he was admitted for, Appellant has always been stabilized prior to discharge and released without any documented need for skilled nursing in his home. (Respondent's Exhibit A, pages 9-20, 26-33).

Regarding such a need, Appellant's primary care physician did write in a letter that Appellant "exhibits respiratory compromise, including a productive cough and inability to swallow or clear secretions independently. He therefore requires frequent suctioning both orally and nasally. Suctioning is required several times an hour to maintain clear airway." (Respondent's Exhibit A, page 34). Similarly, a nurse from the agency Appellant used in the past generally asserts that Appellant requires oral/nasal suctioning ██████ to more than ██████ times an hour. (Respondent's Exhibit A, page 38).

However, as noted by the Department's witness, those assertions are conclusory and unsupported by any specific evidence in the record from the course of Appellant's treatment. Neither the request itself nor the general conclusions of Appellant's medical

providers are sufficient to justify PDN on their own without any explanation of the specific need for skilled nursing assessments.

If Appellant was able to provide new or additional medical information justifying the broad statements of Appellant's medical providers, then the Department would potentially authorize the PDN. Appellant's representative did in fact testify that she has additional information that could be provided to the Department. She and the Department's witness discussed the possibility of Appellant qualifying for PDN services at some point in the future. They further discussed the types of evidence, such as swallowing tests, which the Department would be looking for.

This Administrative Law Judge's jurisdiction, however, is limited to reviewing the Department's decision in light of the information the Department had at the time of its decision was made. Moreover, as discussed above, Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in making its decision.

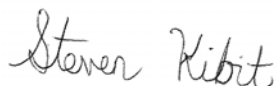
Here, based on the information submitted along with Appellant's request, Appellant has failed to meet his burden of proving that the Department erred in finding that Appellant did not meet Medical Criteria III and therefore did not qualify for PDN services. Appellant clearly has significant medical issues and his medical providers have asserted that he requires PDN. Nevertheless, the request to the Department and the statements by medical providers are not supported by any specific documentation or evidence in the record. There has been no demonstration that Appellant's needs rise to the level required by Medical Criteria III and, at this time, the Department properly denied his request.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

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



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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

[REDACTED]
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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.