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. 14-011173 PAC

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

After due notice, a hearing was held on [redacted]. Appellant's mother [redacted] appeared and testified on Appellant's behalf. [redacted] Nursing Supervisor, [redacted]. also testified on the Appellant's behalf. [redacted], Appeals Review Officer, represented the Department of Community Health. [redacted] Registered Nurse and Medicaid Utilization Analyst with the Program Review Division, appeared as a witness for the Department.

ISSUE

Did the Department properly authorize a transitional reduction in the Appellant's 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. Appellant is an [redacted]-year-old Medicaid beneficiary (DOB [redacted]) who has a primary diagnosis of ICD Code 746.84 (congenital hypertrophic obstructive cardiomyopathy). (Exhibit A, p. 11).

2. Appellant had been receiving [redacted] hours per day of PDN services, [redacted] days a week. On [redacted] the Appellant's PDN was increased to [redacted] hours per day effective [redacted] through [redacted] due to additional medical concerns. The authorization listed a number of documents that would need to be submitted by [redacted] along with the Appellant's next renewal request. (Exhibit A, pp. 7-8 and testimony).

3. On [redacted], Appellant's provider [redacted]. submitted a Prior Authorization (PA) Request to the Department for a renewal of [redacted] hours per day of PDN services, [redacted] days per week. (Exhibit A, pp. 11-168, 170-183 and testimony).

4. On [redacted], the Department sent Appellant's parent or guardian written notice of a transitional reduction in PDN services effective [redacted], approved maintaining [redacted] hours per day through [redacted], [redacted]; effective [redacted], decreasing to [redacted] hours per day through [redacted], and with a baseline of [redacted] hours per day from [redacted] through [redacted]. The Department based its decision on a review of medical documentation submitted from [redacted] dated [redacted], [redacted] dated [redacted], [redacted] dated [redacted] & [redacted] dated [redacted] & [redacted], discharge summary/operative report from [redacted] and nursing notes from [redacted]. covering [redacted] through [redacted]. The notice stated based on a review of the medical documentation and nursing notes submitted by [redacted]. the Appellant no longer met medical criteria for [redacted] hours of PDN services. (Exhibit A, pp. 9-10 and testimony).

5. On [redacted], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed on behalf of the minor Appellant. (Exhibit A, pp. 4-5).

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 reduction in Appellant's private duty nursing (PDN) services and, with respect to such services, the applicable version of the Michigan Medicaid Provider Manual (MPM) states:

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.

* * *

1.7 BENEFIT LIMITATION

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.

The time a beneficiary is under the supervision of another entity or individual (e.g., in school, in day/child care, in work program) cannot be used to meet the eight hours of obligated care as discussed above, nor can the eight hours of care requirement for beneficiaries under age 18 be met by other public funded programs (e.g., MDCH Home Help Program) or other resources for hourly care (e.g., private health insurance, trusts, bequests, private pay). [*MPM, Private Duty Nursing,* July 1, 2014 pp. 1, 7, emphasis added].

Moreover, with respect to determining the amount of hours of PDN that can be approved, the MPM states:

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.

High Category	Medium Category	Low 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.	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.	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

Medicaid uses the "Decision Guide for Establishing Maximum Amount of Private Duty Nursing to be Authorized on a Daily Basis" (below) to establish the amount of PDN that is approved. The Decision Guide is used to determine the appropriate range of nursing hours that can be authorized under the Medicaid PDN benefit and defines the "benefit limitation" for individual beneficiaries. The Decision Guide is used by the authorizing entity after it has determined the beneficiary meets both general eligibility requirements and medical criteria as stated above. The amount of PDN (i.e., the number of hours) that can be authorized for a beneficiary is based on several factors, including the beneficiary's care needs which establish medical necessity for PDN, the beneficiary's and family's circumstances, and other resources for daily care (e.g., private health insurance, trusts, bequests, private pay). To illustrate, the number of hours covered by private health insurance is subtracted from the hours approved under Medicaid PDN. These factors are incorporated into the Decision Guide. The higher number in the range is considered the maximum number of hours that can be authorized. Except in emergency circumstances, Medicaid does not approve more than the maximum hours indicated in the guide.

Only those factors that influence the maximum number of hours that can be authorized are included on this decision matrix. Other factors (e.g., additional dependent children, additional children with special needs, and required nighttime interventions) that impact the caregiver's availability to provide care should be identified during an assessment of service needs. These factors have implications for service planning and should be considered when determining the actual number of hours (within the range) to authorize.

Decision Guide for Establishing Maximum Amount of Private Duty Nursing to be Authorized on a Daily Basis

FAMILY SITUATION/ RESOURCE CONSIDERATIONS		INTENSITY OF CARE Average Number of Hours Per Day		
		LOW	MEDIUM	HIGH
Factor I – Availability of Caregivers Living in the Home	2 or more caregivers; both work or are in school F/T or P/T	4-8	6-12	10-16
	2 or more caregivers; 1 works or is in school F/T or P/T	4-6	4-10	10-14
	2 or more caregivers; neither works or is in school at least P/T	1-4	4-8	6-12
	1 caregiver; works or is in school F/T or P/T	6-12	6-12	10-16
	1 caregiver; does not work or is not a student	1-4	6-10	8-14
Factor II – Health Status of Caregiver(s)	Significant health issues	Add 2 hours if Factor I <= 8	Add 2 hours if Factor I <= 12	Add 2 hours if Factor I <= 14
	Some health issues	Add 1 hour if Factor I <= 7	Add 1 hour if Factor I <= 9	Add 1 hour if Factor I <= 13
Factor III – School *	Beneficiary attends school 25 or more hours per week, on average	Maximum of 6 hours per day	Maximum of 8 hours per day	Maximum of 12 hours per day

* Factor III limits the maximum number of hours which can be authorized for a beneficiary:

- Of any age in a center-based school program for more than 25 hours per week; or
- Age six and older for whom there is no medical justification for a homebound school program.

In both cases, the lesser of the maximum "allowable" for Factors I and II, or the maximum specified for Factor III, applies.

[*MPM, Private Duty Nursing*, § 2.4, July 1, 2014 pp. 11-12].

2.6 CHANGE IN BENEFICIARY'S CONDITION/PDN AS A TRANSITIONAL BENEFIT

Medicaid policy requires that the integrated plan of care (POC) be updated as necessary based on the beneficiary's medical needs. Additionally, when a beneficiary's condition changes, warranting a decrease in the number of approved hours or a discontinuation of services, the provider must report the change to the appropriate authorizing agent (i.e., the Program Review Division, Children's Waiver, or Habilitation Supports Waiver) in writing. Changes such as weaning from a ventilator or tracheostomy decannulation can occur after months or years of services, or a beneficiary's condition may stabilize to the point of requiring fewer PDN hours or the discontinuation of hours altogether. It is important that the provider report all changes resulting in a decrease in the number of hours to the authorizing agent as soon as they occur, as well as properly updating the POC. MDCH will seek recovery of monies inappropriately paid to the provider if, during case review, the authorizing agent determines that a beneficiary required fewer PDN hours than was provided and MDCH was not notified of the change in condition.

> In some cases, the authorized PDN services may be considered a transitional benefit. In cases such as this, one of the primary reasons for providing services should be to assist the family or caregiver(s) to become independent in the care of the beneficiary. The provider, in collaboration with the family or caregiver(s), may decide that the authorized number of hours should be decreased gradually to accommodate increased independence on the part of the family, caregiver(s), and/or beneficiary. A detailed exit plan with instructions relating to the decrease in hours and possible discontinuation of care should be documented in the POC. The provider must notify the authorizing agent that hours are being decreased and/or when the care will be discontinued. [*MPM, Private Duty Nursing*, § 2.6, July 1, 2014 p. 15].

Here, it is undisputed that the Appellant needs some PDN services and it is only the amount of hours authorized that is at issue. As discussed above, Appellant was receiving PDN services [redacted] hours per day, [redacted] days a week and the Department increased them temporarily to [redacted] hours per day [redacted] days per week due to increased medical concerns. The Department has now decided to have a transitional reduction in PDN services effective [redacted], the Department approved maintaining [redacted] hours per day through [redacted]; effective [redacted], decreasing to [redacted] hours per day through [redacted], and with a baseline of [redacted] hours per day from J[redacted] through [redacted]. The notice stated the Appellant no longer met medical criteria for [redacted] hours of PDN services.

Appellant and his representatives bear the burden of proving by a preponderance of the evidence that the Department erred in deciding to reduce her PDN services. For the reasons discussed below, this Administrative Law Judge finds that Appellant has not met that burden of proof.

In this case, [redacted] testified as to how the transitional reduction in services was determined. [redacted] stated back in [redacted], she increased the Appellant's PDN from [redacted] to [redacted] hours per day due to some medical problems with the Appellant having to get some boluses of potassium and infusions of Lasix due to fluid overload. [redacted] stated the Appellant is pretty stable now so they are looking to decrease his PDN hours. Accordingly, she stated they authorized a transitional reduction of the PDN authorized for the Appellant to promote independence of the caregiver.

In support of the transitional reduction, [redacted] specifically reviewed medical documentation submitted from [redacted] dated [redacted] – [redacted] dated [redacted] – [redacted], [redacted] dated [redacted] & [redacted] dated [redacted] & [redacted], discharge summary/operative report from [redacted] and nursing notes from [redacted] covering [redacted] through [redacted] noted the Appellant gets TPN (total parenteral nutrition) 24/7. [redacted] did not specify the number pf PDN hours they thought was necessary, but a Plan of Care submitted indicated [redacted] hours of PDN per day, even though [redacted] hours per day were authorized. [redacted] also noted the

medications being administered by the PDN nurses, which includes potassium, Broviac IV dressing, Hydroclorothiazide, and Lasix.

[redacted] then went through the nursing notes from [redacted] to show multiple entries regarding fluid level and electrolyte balance which indicate that there was no strict monitoring of intake and output of fluids which is usually routine with the type of treatment the Appellant was receiving. Next [redacted] went through the doctor's reports. There was a letter from Appellant's cardiologists on [redacted] stating that the Appellant's cardiac status was stable. There were other letters from Appellant's cardiologists; one on [redacted] stating Appellant was fairly stable with exception of one episode of hypokalemia on [redacted] requiring a potassium bolus, and another on [redacted] stating the Appellant's electrolytes had remained fairly stable in the recent past. [redacted] noted that earlier reports substantiated the prior increase in PDN from [redacted] to [redacted] hours per day due to the Appellant's documented medical problems and additional treatments.

[redacted] also referenced the policy quoted above from the Medicaid Provider Manual. [redacted] pointed out the Benefit Limitation in Section 1.7 which requires that there be a primary caregiver in the home who will provide a minimum of [redacted] hours of care in a typical [redacted]-hour period. She also pointed out that Appellant qualified for PDN because he met Medical Criteria I due to his TPN, and Medical Criteria III due to his daily need for skilled nursing care including performing assessments and monitoring fluid levels and electrolytes, under Section 2.3. Finally, [redacted] stated the Appellant also met Section 2.6 Change in Beneficiary's Condition/PDN as a Transitional Benefit of the Private Duty Nursing chapter. [redacted] stated the PDN is a transitional benefit in cases such as this one to help the parents become independent in the beneficiary's care until they age out of the program at age [redacted]. PDN providers need to develop exit plans to gradually reduce services to allow families to become independent in the beneficiary's care because PDN is not a forever benefit.

In response, Appellant's mother testified the Appellant is on a critical drip and would be an automatic admission if sent to the hospital. She said they have kept the Appellant in the home with "ICU care" with potassium boluses, g and j tube changes, Lasix drips, and IV antibiotics that the nurses are doing in the home. Appellant mother indicated the Appellant is very much unstable right now with his electrolytes, including his sodium has become critical in the last [redacted] months. She indicated the Appellant is very immune compromised and they are trying to keep him out of the hospital where he would be susceptible getting various germs. Appellant's mother said he is sick enough right now to be in the hospital all of the time.

In response to questions by the Department's representative, Appellant's mother indicated she was able to administer all of the Appellant's medications. She further said the Appellant receives between [redacted] and [redacted] hours of PDN per day, but they do not have a PDN nurse on [redacted] because they can't get an RN for [redacted] coverage. The Comprehensive Pediatric Nursing Reassessment dated [redacted] states that the Appellant's mom continues to be the primary caregiver and is very skilled and

knowledgeable with all of his care and medical conditions and could train any new nurses if needed. Appellant's mother said she feels a reduction to [redacted] hours per day is inadequate, because she said the doctor would like a nurse around when the Appellant is given Diamox. However, she acknowledged that the Appellant gets Diamox on [redacted] when there is no nurse present. (Exhibit A, p. 18).

[redacted], Nursing Supervisor, [redacted]. testified for the Appellant. [redacted] said the Appellant's Plan of Care was amended to show the [redacted] hours of PDN authorized in her handwriting, but the amendment was not sent to the Department with their PA request in [redacted]. She further stated the Appellant is a critically fragile client and he is difficult to staff because he is so immune compromised. [redacted] said the nurses monitor all of the Appellant's medical conditions, not just his fluid levels and electrolytes. She further indicated that the Appellant's mother was satisfied with the nursing schedule including not having a PDN nurse on [redacted].

Based upon the medical documentation submitted with the PA request, the Department properly determined that a transitional reduction in PDN was warranted. The Appellant has failed to meet his burden of showing by a preponderance of the evidence that the Department erred in authorizing a transitional reduction in his PDN services. It is not the role of the administrative law judge to receive new or additional evidence and determine the appropriate level of PDN services. Rather the judge can only review the medical documentation submitted along with a PA request and determine if the Department's action is supported by that documentation. According to the information submitted to support the PA request received on [redacted] the Department's notice of a transitional reduction in services issued on [redacted] should be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly authorized a transitional reduction in the Appellant's private duty nursing services based on the medical records submitted in support of the Appellant's PA request.

IT IS THEREFORE ORDERED THAT:

Respondent's decision is **AFFIRMED**.

William D Bond

William D. Bond
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [redacted]

Date Mailed: [redacted]

[redacted]
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WDB/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.