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. 14-013310 PAC

[redacted] [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 Appellant.

After due notice, a hearing was held on [redacted]. Appellant's mother Carol Logerstedt appeared and testified on Appellant's behalf. [redacted], Appeals Review Officer, represented the Department of Community Health. [redacted], BSN, Registered Nurse and PDN Specialist with the Program Review Division, appeared as a witness for the Department.

ISSUE

Did the Department properly deny the 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. Appellant is an [redacted]-year-old Medicaid beneficiary (DOB [redacted]) who has a primary diagnosis of spastic quadriplegic cerebral palsy. (Exhibit A, p. 22).

2. On [redacted], Michigan Medicaid/Children's Special Health Care (CSHCS) received a Prior Authorization (PA) Request on the Appellant's behalf from [redacted] of [redacted] for PDN services. (Exhibit A, p. 20 and testimony).

3. On [redacted], [redacted] and again on [redacted], the Department sent letters to the Appellant's provider [redacted] and to the Appellant explaining the necessary documentation that needed to be submitted in order to properly consider the Appellant's PA request for PDN services. (Exhibit A, pp. 73-78).

4. On [redacted], the Department sent Appellant's parent or guardian written notice of a denial of PDN services. The notice stated based on a medical review of the submitted documentation it has been determined that the Appellant does not meet either medical criteria I and III, or II and III as specified in Section 2.3 of the Private Duty Nursing chapter of the Medicaid Provider Manual, for authorization of PDN hours at that time. (Exhibit A, pp. 11-12 and testimony).

5. On [redacted], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed on behalf of the Appellant. (Exhibit A, pp. 4-10).

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 a denial of the Appellant's request for 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. [*MPM, Private Duty Nursing,* July 1, 2014 p. 1, emphasis added].

Moreover, with respect to determining whether a beneficiary meets the criteria for PDN services, the MPM states:

1.6 GENERAL ELIGIBILITY REQUIREMENTS

The beneficiary is eligible for PDN coverage when all of the following requirements are met:

- The beneficiary is eligible for Medicaid in the home/community setting (i.e., in the noninstitutional setting).

- The beneficiary is under the age of 21 and meets the medical criteria for PDN.

- PDN is appropriate, considering the beneficiary's health and medical care needs.

- PDN can be provided safely in the home setting.

- The beneficiary, his family (or guardian), the beneficiary's physician, the Medicaid case manager, and RN (i.e., from the PDN agency or the Medicaid enrolled RN, or the supervising RN for the Medicaid enrolled LPN) have collaborated and developed an integrated plan of care (POC) that identifies and addresses the beneficiary's need for PDN. The PDN must be under the direction of the beneficiary's physician; the physician must prescribe/order the services. The POC must be signed and dated by the beneficiary's physician, RN (as described above), and by the beneficiary or beneficiary's parent/guardian. The POC must be updated at least annually or more frequently as needed based on the beneficiary's medical needs.

* * *

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).

* * *

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, Private Duty Nursing,* July 1, 2014 pp. 6, 7, 9-11, emphasis added].

Here, pursuant to the above policies, the Department determined that Appellant did not meet the criteria for PDN based on the documentation presented in connection with the PA request submitted by the Appellant's provider [redacted] and it therefore denied the PA request for such services made on his behalf.

Appellant and his representative bear the burden of proving by a preponderance of the evidence that the Department erred in deciding to deny that request. Moreover, 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.

With respect to the denial, [redacted] testified that, the documentation submitted by [redacted] was insufficient to establish the Appellant's eligibility for PDN services. (Exhibit A, pp. 20-72). The documentation did not show that the Appellant meets the requirements of Medical Criteria I and III or Medical Criteria II and III as set forth in the policy quoted above from the Medicaid Provider Manual.

In particular, [redacted] stated the Appellant did have a C-PAP machine, but having a C-PAP alone does not meet Medical Criteria I under the first bullet point. [redacted] stated the second bullet point, oral or tracheostomy suctioning [redacted] or more times in a [redacted] hour period was not shown for the Appellant in the documentation submitted with the PA request. Also, even if the oral suctioning occurred, it is not necessarily a skilled nursing activity. [redacted] stated for bullet point 3, nasogastric tube feeding or gastrostomy feeding, may require more skill but again is not necessarily a skilled nursing activity. Also, for the fourth bullet point, [redacted] stated total parenteral nutrition was not being given to the Appellant. He has a gastrostomy tube, but all gastrostomy feedings are not necessarily a skilled nursing activity requiring PDN services. [redacted] stated that as for the [redacted] bullet point, oxygen administration, the Appellant was receiving oxygen, but the documentation showed the Appellant was on some room air and was not receiving continuous oxygen administration. Accordingly, [redacted] concluded that the Appellant did not meet Medical Criteria I.

[redacted] stated Medical Criteria II, frequent episodes of medical instability within the past [redacted] to [redacted] months, must be established by more emergent issues than the medical issues shown in the medical documentation submitted with the PA request. [redacted] stated the Appellant had some medical visits, including some for refilling and programming of his Baclofen pump, which is not considered an emergent situation that would qualify the Appellant for PDN services. [redacted] stated Medical Criteria III would be met where the beneficiary requires continuous skilled nursing care on a daily basis. [redacted] stated the Appellant's condition does merit continued attention, but the nature of his care does not necessarily require the presence of a skilled nurse which would qualify the Appellant for PDN services. Accordingly, [redacted] concluded that the Appellant did not meet Medical Criteria II or Medical Criteria III. In short, the documentation submitted by [redacted] did not establish that the Appellant met the Medical Criteria I and II or Medical Criteria II and II, and therefore, he did not qualify for PDN services.

In response, Appellant's mother testified that she believed the Appellant did meet the medical criteria for the PDN services. She said that she was a nurse and that her son does have a C-PAP machine and does get suctioned several times per day. She said the information submitted by [redacted] was not sufficient to show that the Appellant met the criteria for the PDN. Appellant's mother said the Appellant is being punished because the proper documentation was not submitted. She claimed that she would have to quit her job and stay home if PDN services are not approved. She further stated that they are able to get by now because her husband lost his job and is able to stay home with the Appellant at this time. Appellant's mother stated she does not think that the documentation submitted by [redacted] reflects what is actually going on in the home.

Given the above evidence, this Administrative Law Judge finds that Appellant and his representative have failed to meet their burden of proof. Based upon the documentation submitted by [redacted] it was not shown that the Appellant met the Medical Criteria I and II or Medical Criteria II and II, and therefore, he did not qualify for PDN services. Appellant's mother in effect acknowledged that the documentation submitted by [redacted] was insufficient to establish the Appellant's eligibility for PDN services.

Appellant and his representative have failed to meet their burden of showing that the Department erred or that Appellant meets the criteria for PDN services identified in the applicable policy. Accordingly, the Department's decision to deny the request for such services must 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 denied Appellant's request for private duty nursing services.

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.