

**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.** 14-005425 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 a request for a hearing filed on behalf of the minor Appellant.

After due notice, a hearing was held on ██████████ Appellant's grandmother and legal guardian, appeared and testified on Appellant's behalf. ██████████ Appellant's case manager at the local Community Mental Health, also testified as a witness for Appellant. ██████████ Appeals Review Officer, represented the Department of Community Health. ██████████ Registered Nurse and Medicaid Utilization Analyst, 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. Appellant is an █-year-old Medicaid beneficiary who has been diagnosed with chronic obstructive pulmonary disease; pulmonary hypertension; Down syndrome; dysphagia; and congestive heart failure. (Respondent's Exhibit A, pages 5-6).
2. On or about ██████████, the Department received a prior authorization request submitted on Appellant's behalf by ██████████ of ██████████ and requesting █ hours a day of PDN, █ days per week. (Respondent's Exhibit A, pages 5-22, 37-134; Testimony of ██████████).
3. On ██████████, the Department sent Appellant's provider a request for additional information. (Respondent's Exhibit A, pages 23-24).

4. Specifically, that request stated:

In order to process this request, the Department needs the following information:

1. The following information is required for review to determine if the beneficiary medically qualifies for Private Duty Nursing:
  - Summary(ies) of medical progress which occurred during the ██████████ through ██████████ timeframe as listed below:
  - Inpatient/ER (or other significant medical) events, and or acute physician visit(s).
  - Admission History and Physical report(s), Discharge Summary(ies), Post InPatient/post ER Assessment(s) or Post-acute Physician Visit Assessment(s)/Note(s).
  - Results of routine physician visits, planned medical visits/tests.
  - Test results (i.e. bronchoscopy, sleep study, etc).
  - What are the skilled nursing care needs of the beneficiary.

*Respondent's Exhibit A, page 23*

5. No additional information was received by ██████████ and the Department sent Appellant's guardian written notice that the request for PDN services was denied. (Respondent's Exhibit A, pages 25-26).
6. Specifically, that notice stated that the denial was based on the PDN Chapter of the Medicaid Provider Manual and that Appellant did not meet the criteria outlined in that chapter. (Respondent's Exhibit A, page 25).
7. On ██████████ submitted a packet of documentation to the Department. (Respondent's Exhibit A, pages 28-134).
8. On ██████████, the Department sent out another notice to the provider:

Your request does not require further action because:

Additional documentation submitted has been reviewed. No new information received with the exception of the Plan of Care which does

not identify any skilled nursing needs. All other documentation submitted is duplicate of documentation reviewed to make original decision. Denial of PDN stands due to Standards of Coverage not met and no skilled nursing needs identified.

*Respondent's Exhibit A, page 27*

9. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed on behalf of the minor Appellant in this matter. (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 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, April 1, 2014 version  
Private Duty Nursing Chapter, pages 1, 7*

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.

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### 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:

<b>Medical Criteria I</b>	<b>The beneficiary is dependent daily on technology-based medical equipment to sustain life.</b> "Dependent daily on technology-based medical equipment" means: <ul style="list-style-type: none"><li>▪ Mechanical ventilation four or more hours per day or assisted respiration (Bi-PAP or CPAP); or</li><li>▪ Oral or tracheostomy suctioning 8 or more times in a 24-hour period; or</li><li>▪ Nasogastric tube feedings or medications when removal and insertion of the nasogastric tube is required, associated with complex</li></ul>
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	<p>medical problems or medical fragility; or</p> <ul style="list-style-type: none"><li>▪ Total parenteral nutrition delivered via a central line, associated with complex medical problems or medical fragility; or</li><li>▪ Continuous oxygen administration, in combination with a pulse oximeter and a documented need for observations and adjustments in the rate of oxygen administration.</li></ul>
<p><b>Medical Criteria II</b></p>	<p><b>Frequent episodes of medical instability within the past three to six months</b>, requiring skilled nursing assessments, judgments or interventions as described in III below, due to a substantiated progressively debilitating physical disorder.</p> <ul style="list-style-type: none"><li>▪ "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;</li><li>▪ "Medical instability" means emergency medical treatment in a hospital emergency room or inpatient hospitalization related to the underlying progressively debilitating physical disorder;</li></ul>

	<ul style="list-style-type: none"><li>▪ "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.</li><li>"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.</li><li>▪ "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</li><li>▪ "Substantiated" means documented in the clinical/medical record, including the nursing notes.</li></ul> <p>For beneficiaries described in II, the requirement for frequent episodes of medical instability</p>
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	<p>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.</p>
<b>Medical Criteria III</b>	<p><b>The beneficiary requires continuous skilled nursing care on a daily basis</b> during the time when a licensed nurse is paid to provide services.</p> <ul style="list-style-type: none"><li>▪ "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.</li><li>▪ Equipment needs alone do not create the need for skilled nursing services.</li><li>▪ "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</li></ul>

	central venous catheter care; managing mechanical ventilation; oxygen administration and evaluation; and tracheostomy care.
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*MPM, April 1, 2014 version  
Private Duty Nursing Chapter, pages 6, 9-11*

Here, pursuant to the above policies, the Department determined that Appellant does not meet the criteria for PDN and it therefore denied the prior authorization 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 made that decision.

With respect to the denial, ██████████ first testified that the submitted documentation failed to meet the general eligibility requirement that Appellant's physician must have prescribed/ordered the services and signed the plan of care. Moreover, with respect to the specific medical criteria outlined in the above policy, ██████████ also testified that, while Appellant meets the requirements of Medical Criteria I due to his use of a Bi-PAP machine and an oxygen machine, he does not meet the requirements of Medical Criteria III because there was no showing of a need for continuous skilled nursing care on a daily basis. In particular, ██████████ noted that the vast majority of the interventions described in the Plan of Care did not require the education, training, and experience of a licensed nurse and that, while Appellant had been hospitalized a number of times in the past ██████████ years, he was always stabilized and discharged without an order for PDN. ██████████ further testified that she reviewed the notes entered by nurses who had been providing services to Appellant in the home prior to the decision regarding Appellant's request, and that those notes merely reflected a general monitoring of Appellant's health rather than any skilled nursing.

In response, Appellant's witnesses testified that Appellant's doctor has prescribed the PDN and that the prescription should have been included as part of the submitted documentation. Appellant's representative also testified that the Plan of Care does not reflect the sole reason why she requested PDN, *i.e.* the administration of oxygen, as the nurse does not help with the BiPAP machine or any other behaviors or activities. According to Appellant's representative, while it is difficult on her, she takes care of Appellant's needs except when his oxygen drops below a certain level, at which point she must take him to the hospital.

Given the above evidence, this Administrative Law Judge finds that Appellant and his representative have failed to meet their burden of proof. There is no prescription for PDN signed by Appellant's doctor in the record; the Plan of Care that was submitted

was not signed by Appellant's physician; and Appellant was discharged from the hospital each time as stable and without any orders for PDN. Moreover, while a nurse would assist Appellant's legal guardian in caring for Appellant, there is no need for continuous skilled nursing on a daily basis as the nursing notes and Plan of Care fail to identify any need beyond monitoring a machine. Appellant's representative did testify that the Plan of Care submitted is inaccurate in a number of areas, but she also failed to identify a need for continuous skilled nursing on a daily basis as opposed to just benefitting from the presence of a nurse in the rare, severe situations that would require a trip to the hospital regardless.

Appellant and his representative have therefore 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:**

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

*Steven Kibit*

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

Date Signed: [REDACTED]  
Date Mailed: [REDACTED]

SJK/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.