

**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.** 14-007096 PAC

████████████████████

██████████

██████████

Appellant

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**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/Petitioner.

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

**ISSUE**

Did the Department properly decide to reduce 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 a ██████-year-old Medicaid beneficiary who has a history of Arnold-Chiari malformation; myelomeningocele; hydrocephalus status post VP shunt; hydronephrosis; hypertension; chronic respiratory failure; obstructive sleep apnea; significant central sleep apnea; breath holding episodes; dysphagia; vocal cord paralysis; and status post tracheostomy and ventilator dependent. (Respondent's Exhibit A, pages 6, 23-24).
2. Since Appellant was ██████-weeks-old, she has used a ventilator at night and as needed during the day. (Testimony of Appellant's representative).
3. Appellant has been receiving ██████ hours per day of PDN through the Department. (Respondent's Exhibit A, pages 7-8; Testimony of Appellant's representative; Testimony of ██████████)

4. Typically, Appellant's parents utilize █████ hours per day of that PDN during the night while Appellant is sleeping. (Testimony of Appellant's representative).
5. The other █████ hours per day is used out-of-the home, as it takes █████ people, including the nurse, to safely transport Appellant anywhere, including appointments with doctors or physical therapists. (Testimony of Appellant's representative).
6. In █████ and █████, the Department undertook a routine review of Appellant's PDN, including an evaluation of plans of care from as early as █████; nursing notes from as early as █████; and other medical documentation. (Respondent's Exhibit A, pages 14-79; Testimony of █████)
7. All of that documentation indicated that Appellant only used a ventilator during sleeping hours and as needed during the day. (Respondent's Exhibit A, pages 16, 23, 39, 47, 61-62; Testimony of █████).
8. However, the documentation did not indicate when Appellant stopped using a ventilator during the day or if she ever had. (Testimony of █████)
9. All of the plans of care continued to recommend █████ hours of PDN during the night and additional PDN during the day for travel to appointments with doctors or other outings. (Respondent's Exhibit A, page 15; Testimony of █████)
10. On █████, the Department sent Appellant's parents a Notification of Transitional Reduction of Private Duty Nursing Services. (Respondent's Exhibit A, page 7-8).
11. In that notification, the Department stated that Appellant's PDN would be reduced to █████ hours per day on █████. (Respondent's Exhibit A, page 7).
12. Regarding the reason for the reduction, the notification also stated:

This review indicates that a change in the authorized services is warranted because:

Based on the submitted documentation, the beneficiary's respiratory course has progressed from █████ hour continuous mechanical ventilator support requirements to

being off the vent while awake with ventilator support during sleep hours.

*Respondent's Exhibit A, page 8*

13. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed on Appellant's behalf in this matter and disputing the proposed reduction in PDN services. (Respondent's Exhibit A, pages 5-6).
14. Due to the filing of the request for hearing, the proposed reduction in services was not implemented and Appellant has continued to receive ██████████ hours a day of PDN. (Testimony of Appellant's representative; Testimony of ██████████)

### **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 reduction in private duty nursing (PDN) services and, with respect to such services, the Michigan Medicaid Provider Manual (MPM) states in part:

#### **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, July 1, 2014 version  
Private Duty Nursing Chapter, pages 1, 7*

Moreover, with respect to care requirements for PDN, the MPM also provides in part:

## **SECTION 2 – CARE REQUIREMENTS**

### **2.1 PLAN OF CARE**

A written plan of care (POC) guides all services provided to the beneficiary by the PDN provider. The POC identifies and addresses the beneficiary's need for PDN. The POC and the process for developing it reflect the beneficiary's and family's basic rights of self-determination and autonomy.

- Family members and the beneficiary (as appropriate to his maturity) participate in developing the POC. They are provided with accurate information and support appropriate

to informed decision-making. They must give informed consent for the planned services by signing and dating the POC annually and when updating the POC as needed based on the beneficiary's medical needs.

- Beneficiary/family strengths, including cultural and ethnic identity, are respected and utilized in the delivery of care. Services delivered in the home accommodate beneficiary/family life activities.
- The plan includes goals directed toward increasing beneficiary/family capability, effectiveness, and control.
- The plan includes compensatory services to support the growth and developmental potential of each beneficiary, given his disability or illness.
- Appointments are coordinated and services are scheduled with the goals of minimizing inconvenience to the beneficiary/family, and of facilitating the family's participation in the beneficiary's care.
- If the services are provided by LPNs, the POC must identify the frequency of the supervisory RN visits.

The written POC must be retained in the beneficiary's medical record.

\* \* \*

#### **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 (prior authorized and billed in 15-minute increments) 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., time) 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
<b>Factor I – Availability of Caregivers Living in the Home</b>	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	4-8	6-12	10-16
	1 caregiver; does not work or is not a Student	1-4	6-10	8-14
<b>Factor II – Health Status of Caregiver(s)</b>	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
<b>Factor III – School *</b>	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
<p>* Factor III limits the maximum number of hours which can be authorized for a beneficiary:</p> <ul style="list-style-type: none"> <li>▪ Of any age in a center-based school program for more than 25 hours per week; or</li> <li>▪ Age six and older for whom there is no medical justification for a homebound school program.</li> </ul> <p>In both cases, the lesser of the maximum "allowable" for Factors I and II, or the maximum specified for Factor III, applies.</p>				

\* \* \*

**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, July 1, 2014 version  
Private Duty Nursing Chapter, pages 9, 11-12, 15  
(Emphasis added)*

The above policy therefore provides that, when a beneficiary's condition changes, those changes may warrant a decrease in the number of approved PDN hours. Moreover, the weaning off of a ventilator is specifically identified as a change that may justify a reduction in PDN hours.

Here, pursuant to the above policy, the Department decided that Appellant's PDN should be reduced to █████ hours per day based on its review of the submitted documentation and its determination that Appellant's respiratory course had improved from █████ hour continuous mechanical ventilator support requirements to being off the vent while awake with ventilator support during sleep hours.

Appellant and her representative bear the burden of proving by a preponderance of the evidence that the Department erred in deciding to reduce Appellant's PDN services.

Given the record in this case, Appellant and her representative have met that burden of proof and the decision to reduce Appellant's PDN services must be reversed. While the Department's decision relied solely on the fact that Appellant's condition had improved and she no longer required ventilator support while she was awake, there is no evidence that Appellant ever required such support during the day or that her condition has changed from the time of the previous authorization of services. For example, Appellant's representative credibly testified that Appellant has only required ventilator support during sleep hours since she was [REDACTED] weeks-old and has never needed the authorized PDN for assistance with a ventilator during the day. Similarly, while the documentation reviewed by the Department all indicates that Appellant only uses a ventilator during sleeping hours or as needed during the day, that documentation does not reflect any change or improvement in Appellant. Even the Department's witness acknowledged that she does not know when, if ever, Appellant required the continuous use of a ventilator during the day and that it could very well be the case that Appellant only required a ventilator at night at the time services were first authorized.

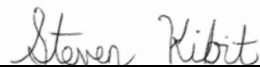
As stated in the notice of reduction, the Department's decision relied solely on its determination that Appellant's condition had progressed since PDN was approved and that she therefore required less services per day. However, that determination is completely unsupported and is also contradicted by Appellant's representative's credible testimony. Accordingly, Appellant and her representative have met their burden of proof and the decision to reduce Appellant's PDN services must be reversed.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly decided to reduce Appellant's private duty nursing services.

**IT IS THEREFORE ORDERED THAT:**

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



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Steven Kibit  
Administrative Law Judge  
for Nick Lyon, Director  
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

[REDACTED]  
Docket No. 14-007096 PAC  
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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.