

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. 14-010991 PAC
Case No. ██████████

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████

Appellant did not appear or testify. ██████████, parent and representative, appeared and testified on behalf of Appellant. ██████████, LPN, appeared as a witness on behalf of Appellant.

██████████, Appeals Review Officer, represented the Department. ██████████, RN, Medicaid Utilization Analyst, appeared as a witness for the Department.

ISSUE

Did the Department properly decrease the Appellant's private duty nursing (PDN) hours?

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 with multiple medical problems including spinal muscular atrophy type 2 with nocturnal hypoventilation, on NIPPV overnight, dysphagia, and neuromuscular scoliosis (Exhibit A.79)
2. Appellant had been approved for Medicaid-covered PDN care 10 hours per day.
3. In ██████████, the Department conducted a review of Appellant's transitional PDN service hours. Following the review, on ██████████ the

Department issued a notice to Appellant and his PDN provider that his PDN services would be reduced transitionally as follows: PDN would be reduced to 8 hours per day effective ██████████. (Exhibit A.11)

4. On ██████████, a Request for Hearing was filed on the Appellant's behalf. (Exhibit A.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.

The Children's Special Health Care Services program is established pursuant to 42 USC 700, *et seq.* It is administered in accordance with MCL 333.5805, *et seq.*

Children's Special Health Care Services (CSHCS) is a program within the Michigan Department of Community Health (MDCH) created to find, diagnose, and treat children in Michigan who have chronic illnesses or disabling conditions. CSHCS is mandated by the Michigan Public Health Code, Public Act 368 of 1978, in cooperation with the federal government under Title V of the Social Security Act and the annual MDCH Appropriations Act. CSHCS promotes the development of service structures that offer specialty health care for the CSHCS qualifying condition that is family centered, community based, coordinated, and culturally competent.

MDCH covers medically necessary services related to the CSHCS qualifying condition for individuals who are enrolled in the CSHCS Program. Medical eligibility must be established by MDCH before the individual is eligible to apply for CSHCS coverage. Based on medical information submitted by providers, a medically eligible individual is provided an application for determination of nonmedical program criteria.

An individual may be eligible for CSHCS and eligible for other medical programs such as Medicaid, Adult Benefits Waiver (ABW), Medicare, or MICHild. To be determined dually eligible, the individual must meet the eligibility criteria for CSHCS and for the other applicable program(s).

*Medicaid Provider Manual, Children's Special Health
Care Services, Section 1, April 1, 2013*

General information regarding Private Duty Nursing (PDN) may be found in the Department's Medicaid Provider Manual, Private Duty Nursing, Section 1.

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.

The Medicaid covered PDN service limitations are provided in the Medicaid Provider Manual, Private Duty Nursing, Section 1.6.

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).

*Medicaid Provider Manual, Private Duty Nursing,
Section 1.6, April 1, 2013.*

The medical criteria for PDN services are provided in the Medicaid Provider Manual, Private Duty Nursing in Section 2.3.

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 eight 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.

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.

*Medicaid Provider Manual,
Private Duty Nursing Section
Section 2.3, April 1, 2013*

A PDN provider is also required to report changes in a beneficiary's condition that warrant a decrease in the number of approved hours or a discontinuation of services. *Medicaid Provider Manual, Private Duty Nursing, Section 2.6 April 1, 2013.*

In this case, there is no dispute that Appellant meets the eligibility criteria for PDN; the issue is whether the decrease from 10 hours of PDN services per day to 8 hours of PDN services per day was proper. This decrease was prompted by a review of Appellant's medical records by the Department's R.N., Medicaid Utilization Analyst.

The Department's R.N., Medicaid Utilization Analyst testified that she reviewed the Extended Hour Nursing Flow Sheets that show Appellants oxygen saturations to be 98 to 100%; 99%; 99%. (Exhibits A.38; A.50; A.89; A.81) Dr. ██████████ medical documentation indicates that Appellant has had no recent respiratory illnesses with noted Oxygen saturation of 99%. (Exhibit A.79-84) The Medicaid Utilization Analyst witness also examined medical documentation from Dr. ██████████ dated ██████████; Dr. ██████████ dated ██████████; ██████████ NP dated ██████████ and ██████████; Dr. ██████████ dated ██████████; Dr. ██████████ dated ██████████, Dr. ██████████ dated ██████████; and the nursing notes from ██████████ covering ██████████ to ██████████ from Dr. ██████████ dated ██████████. (Exhibit A)

The Department also pointed out that Appellant receives 35 hours per week of CLS care, 5 hours per day of aide care. In addition, Appellant attends school. Appellant's representative argued that Appellant does not attend school every day. However, the representative's testimony regarding recent school attendance was not contrary to the Medium intensity of care under Factor III-School-MPM 2.4 utilized by the Department.

As noted by Section 1.6 in the Medicaid Provider Manual, the law and policy requires the Department to calculate the caregiver's/parent contribution at 8 hours per day. Moreover, the time a beneficiary is under the supervision of another entity or individual (including school) cannot be used to meet the parent's 8 hours of obligated care. MPM, Section 1.6.

The Department's R.N., Medicaid Utilization Analyst also reviewed the amount of assistance performed by the PDN regarding, testifying regarding the amount of tracheotomy care, suctioning, and, secretion related factors reported by the PDN in the extended hour nursing flow sheets, use of a bi-pac machine, and related medical evidence support her decision to reduce Appellant's PDN

Based on the documentation submitted to the Department, the determination to decrease the Appellant's PDN hours transitionally from 10 hours per day to 8 hours per day was proper. Based on the evidence submitted, Appellant failed to prove, by a preponderance of evidence that the reduction in PDN was improper at the time it was made.

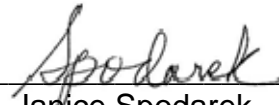
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DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly reduced the Appellant's PDN hours based on the available information.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.



Janice Spodarek
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

RJM [REDACTED]

cc: [REDACTED]
[REDACTED]
[REDACTED]

Date Signed: [REDACTED]

Date Mailed: [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.