

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

██████████

Appellant

Docket No. 14-011174 PAC
Case No. ██████████

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's father, appeared and testified on Appellant's behalf. ██████████, Appeals Review Officer, represented the Department of Community Health (DCH or Department). ██████████, RN, Prior Authorization (PA) Private Duty Nursing (PDN) Reviewer, appeared as a witness for the Department.

ISSUE

Did the Department properly deny Appellant's request for an increase in 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, born ██████████. (Exhibit A, p 23; Testimony)
2. Appellant is diagnosed with critical aortic stenosis status-post repair, trachomalacia and severe left mainstem bronchomalacia resulting in chronic respiratory failure, tracheostomy and ventilator dependence. (Exhibit A, p 31; Testimony).
3. Upon his release from the hospital in ██████████, Appellant was approved for 16 hours per day of PDN. The notice authorizing the PDN indicated that Appellant's PDN would then be transitionally reduced to 12 hours per day. (Exhibit A, p 37; Testimony)

4. On ██████████, the Department received a request from Appellant's PDN provider to continue PDN at 16 hours per day for an additional 2 months. The request indicated that the continued level of PDN was required because Appellant's mother, a teacher, would be off during the summer and could adjust to the decrease in PDN hours at that time, while also prepare for going back to work in ██████████. (Exhibit A, p 38; Testimony)
5. The Department approved continued 16 PDN hours per day from ██████████ through ██████████, but then indicated that PDN would be reduced transitionally to 12 PDN hours per day thereafter. (Exhibit A, pp 44-49; Testimony)
6. On ██████████, Appellant's PDN provider requested that Appellant's PDN be increased back to 16 hours per day effective ██████████ because both parents would be back to work at that time and because Appellant had further been diagnosed with severe subglottic and tracheal stenosis, which would require reconstructive surgery after he was weaned off the ventilator. (Exhibit A, pp 50-85; Testimony)
7. On ██████████, the Department notified Appellant's parents that the request for 16 PDN hours per day effective ██████████ had been denied. (Exhibit A, pp 86-87; Testimony)
8. Appellant's request for hearing was received by the Michigan Administrative Hearing System on September 11, 2014. (Exhibit 1)

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, July 1, 2014*

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

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].

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.

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
<p>* Factor III limits the maximum number of hours which can be authorized for a beneficiary:</p> <ul style="list-style-type: none"> ▪ 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].

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 July 1, 2014.*

In this case, there is no dispute that Appellant meets the eligibility criteria for PDN; the issue is whether an increase from 12 hours of PDN services per day to 16 hours of PDN services per day is medically necessary.

The Department's R.N., Prior Authorization (PA) Reviewer testified that she received Appellant's request to increase PDN to 16 hours per day on ██████████. The Department's R.N., PA Reviewer indicated that she reviewed all of the documentation attached to the request, including the Plan of Treatment, Operative Notes, Nursing Notes, and Physician Notes, as well as all documentation submitted with the original PDN request and the request to continue PDN at 16 hours per day received in ██████████. Based on the documents submitted, the Department's R.N., PA Reviewer testified that there was nothing in the documentation to support an increase in PDN. The Department's R.N., PA Reviewer testified that Appellant was only authorized for 16 PDN hours per day upon his release from the hospital in order to allow the family to adjust to caring for Appellant in the home. The Department's R.N., PA Reviewer pointed out that the Department did extend the authorization for 16 PDN hours per day for 2 months per the family's request and also pointed out that in that request the family indicated that they wanted to wait until the summer to adjust to the decrease in PDN hours from 16 to 12 per day. The Department's R.N., PA Reviewer testified that her review of the documentation showed that Appellant was stable in the home, was being weaned off the ventilator, and was now eating orally. The Department's R.N., PA Reviewer also indicated that she noted Appellant's diagnosis of severe subglottic and tracheal stenosis, which would require reconstructive surgery after he was weaned off the ventilator, but that did not support a finding of increased PDN.

The Department's R.N., PA Reviewer also reviewed the policy that she relied on in making the decision to reduce Appellant's PDN. The Department's R.N., PA Reviewer indicated that according to the Decision Guide for PDN found in the Medicaid Provider Manual, Appellant fit into the Medium Intensity of Care and would be entitled to 6-12 hours of PDN per day because he has two or more caregivers; both of whom works full-time. The Department's R.N., PA Reviewer also indicated that even if Appellant was to be considered in the High category of Intensity of Care in the Decision Guide, he would only be entitled to 10-16 hours of PDN per day and the 12 hours of PDN per day was within those limits. The Department's R.N., PA Reviewer also referred to that portion of the PDN policy that indicates that PDN may be considered a transitional service, whereby the provider of PDN is encouraged to train family members to do some of the tasks they would normally handle so that the level of PDN could be reduced over time.

Appellant's father testified that the only change in Appellant's condition since he left the hospital was that he was now eating orally and was being weaned off the ventilator. Appellant's father indicated, however, that the main condition putting Appellant's life at risk was the severe subglottic and tracheal stenosis, which was going to require surgery when Appellant was completely off the ventilator. Appellant's father indicated that because of this condition, Appellant needed to be watched 24 hours per day because if his tracheostomy came out, he would die. Appellant's father testified that there have only been a couple of occasions since Appellant has been home where his tracheostomy has come out, but they were very scary as Appellant became distressed within 30 seconds and started to turn blue. Appellant's father testified that because both he and his wife work full-time, and because a nurse needs to be with Appellant

every night for 8 hours, the remaining 4 hours per day is simply not enough to cover the time he and his wife are at work. Appellant's father indicated that this is true even though they forego daytime PDN during the weekends to help out.

Appellant's father testified that per his reading of the Medicaid Provider Manual (MPM), Appellant would be in the High category of Intensity of Care, which would allow him up to 16 PDN hours per day. Appellant's father also indicated that the MPM shows that the Department should take into account the fact that his wife's insurance currently pays for 75% of the PDN and Medicaid only pays for 25%. Appellant's father indicated that if his wife has to quit her job as a teacher, she will lose her insurance and, because his insurance does not cover PDN at all, Medicaid would end up paying 100% of the cost of PDN.

In response, the Department's R.N., PA Reviewer testified that who is paying for PDN does not factor into her determination of the amount of PDN that should be authorized.

Based on the documentation submitted to the Department, the determination to deny the Appellant's request to increase PDN hours to 16 hours per day was proper because there was nothing in the documentation to support an increase in PDN. In addition, Appellant was only authorized for 16 PDN hours per day upon his release from the hospital in order to allow the family to adjust to caring for Appellant in the home and the Department did extend the authorization for 16 PDN hours per day for 2 months per the family's request because in that request the family indicated that they wanted to wait until the summer to adjust to the decrease in PDN hours from 16 to 12 per day. A review of the documentation also showed that Appellant was stable in the home, was being weaned off the ventilator, and was now eating orally. Furthermore, according to the Decision Guide for PDN, Appellant fit into the Medium Intensity of Care and would be entitled to 6-12 hours of PDN per day because he has two or more caregivers; both of whom works full-time. Also, even if Appellant was to be considered in the High category of Intensity of Care in the Decision Guide, he would only be entitled to 10-16 hours of PDN per day and 12 hours is within those limits. As such, based on the evidence submitted, Appellant failed to prove, by a preponderance of evidence that the denial of increased PDN was improper at the time it was made.

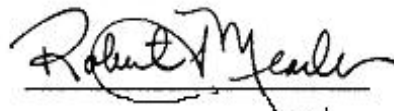
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Decision and Order

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

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



Robert J. Meade
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

cc:

[REDACTED]

RJM/ [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.