

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. 2014-20607 PAC

██████████ ██████████

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 mother, appeared and testified on Appellant's behalf through an interpreter. ██████████ ██████████, 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 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 an █-year-old Medicaid beneficiary who has been diagnosed with microcephaly; periventricular leukomalacia; hypoparathyroidism; sleep apnea; and respiratory insufficient/upper airway obstruction. (Respondent's Exhibit A, pages 5-6, 8).
2. Due to her medical conditions, Appellant has been receiving █ hours per day of PDN services, █ days a week. (Respondent's Exhibit A, pages 13-67; Testimony of ██████████).
3. On ██████████ Appellant underwent a tracheal decannulation. (Respondent's Exhibit A, page 6).

4. Following that procedure, the plan was to terminate Appellant's PDN services completely in █ to █ weeks if everything went fine. (Testimony of █).
5. However, Appellant soon started desaturating at night, stopped breathing at times, and had colored feedings coming out of her tracheotomy site. (Respondent's Exhibit A, page 6).
6. On █, Appellant underwent a dilatation of her tracheocutaneous fistula with replacement of tracheostomy tube. (Respondent's Exhibit A, pages 8-9).
7. On or about █, Appellant's registered nurse submitted a prior authorization request to the Department for decreased PDN hours, *i.e.* █ hours per day. (Respondent's Exhibit A, page 5; Testimony of A█).
8. The prior authorization request also noted that Appellant was in school █ hours per day, █ days a week, and that her mother worked or was in school over █ hours a week. (Respondent's Exhibit A, page 5).
9. On █, the Department sent Appellant's mother written notice of a reduction in PDN services. (Respondent's Exhibit A, pages 11-12).
10. Specifically, that notice provided that, based on a review of the PDN provider documentation and some of Appellant's medical records, it has been determined that Appellant only met the criteria for █ hours a day of PDN and that Appellant's services would be reduced to that amount starting █. (Respondent's Exhibit A, pages 11-12).
11. On █, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed on behalf of the minor Appellant. (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 reduction in Appellant's 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, October 1, 2013 version

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 [CHANGE MADE 4/1/13]

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. <p>In both cases, the lesser of the maximum "allowable" for Factors I and II, or the maximum specified for Factor III, applies.</p>				

*MPM, October 1, 2013 version
MI Choice Waiver Chapter, pages 11-12*

Here, it is undisputed that Appellant needs some PDN and it is only the amount of hours to be authorized that is at issue. As discussed above, Appellant was receiving such services █ hours per day, █ days a week and the Department has decided to reduce them to █ hours per day, █ days a week.

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

For the reasons discussed below, this Administrative Law Judge finds that Appellant has not met that burden of proof. In this case, the prior authorization request actually asked for decreased hours and Appellant received all that was requested. Moreover, ██████ testified as to how the █ hours were calculated and how █ hours per day was the maximum Appellant could receive pursuant to the above Decision Guide given her medium intensity of care category; the fact that her sole caregiver works full-time; and the fact that Appellant is in school █ hours per week.

In response, Appellant's mother/representative only testified that Appellant will miss school some days and does not have school on the weekend. However, the Decision Guide only requires that the beneficiary be in school an average of █ hours or more per week to limit a beneficiary such as Appellant to a maximum of █ hours per day and both the prior authorization request and Appellant's mother's testimony demonstrate that Appellant is in school more than an average of █ hours or more per week.

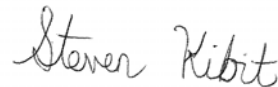
Accordingly, as it undisputed that Appellant falls into the medium Intensity of Care category and attends school █ or more hours per week, on average, the Decision Guide limits her to a maximum of █ hours per day of PDN and the Department's reduction in services must be sustained.

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 private duty nursing services.

IT IS THEREFORE ORDERED that:

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



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

Date Signed: ██████████

Date Mailed: ██████████

[REDACTED]
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SK/db

cc:

[REDACTED]
[REDACTED]
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***** 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.