

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. 2014-23936 PAC

██████████

██████████

Appellant

_____ /

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, an in-person hearing was held on ██████████ Appellant's mother ██████████ appeared and testified on Appellant's behalf. ██████████ RN, Case Manager with ██████████, also testified on the Appellant's behalf. Appellant's father ██████████ and the Appellant were also present but did not provide testimony. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Registered Nurse and Medicaid Utilization Analyst with the Program Review Division, 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 (DOB ██████████) who has been diagnosed with epilepsy, myelomeningocele, arnold-chiari malformation, dysphagia, and chronic respiratory failure requiring █ hour ventilator dependence and suctioning. (Exhibit A, pp. 21, 24, 29, 30, 31, 33, 35 and testimony).

2. Due to her medical conditions, Appellant has been receiving █████ hours per day of PDN services, █ days a week. (Exhibit A, pp. 2, 15, 17, 19-20, 21 22 and testimony).
3. On or about ████████████████████, Appellant's RN Case Manager ██████████ submitted a Prior Authorization (PA) Request to the Department for a renewal of █ hours per day of PDN services, █ days per week. The PA request stated the Appellant was in school █ hours per day, █ hours per week. (Exhibit A, pp. 21-61 and testimony).
4. On ██████████, the Department sent Appellant's parents written notice of a transitional reduction in PDN services effective ██████████ approving █ hours per day through ██████████ hours per day from ██████████ and █ hours per day from ██████████. The notice stated that the Appellant no longer met medical criteria for █ hours of PDN services. (Exhibit A, pp. 17-18, 21, 22).
5. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed on behalf of the minor Appellant. (Exhibit A, pp. 4-16).

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, January 1, 2014 version
Private Duty Nursing Chapter, 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.

Docket No. 2014-23936 PAC
Decision and Order

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, January 1, 2014 version
MI Choice Waiver Chapter, pp. 11-12*

Here, it is undisputed that the Appellant needs some PDN and it is only the amount of hours authorized that is at issue. As discussed above, Appellant was receiving PDN services █ hours per day, █ days a week and the Department has decided to have a transitional reduction of PDN services, approving █ hours per day through █ hours per day from █ and █ hours per day from █

Appellant and her representatives 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, Nurse █ testified as to how the █ hours were determined and how the █ hours per day was the maximum Appellant could receive pursuant to the above Decision Guide given her medium intensity of care category and the fact that Appellant was reported to be in school █ hours per week.

██████████
Docket No. 2014-23936 PAC
Decision and Order

Nurse ██████ stated she received the PA request submitted in this case and reviewed the medical documentation submitted along with the PA request. Nurse ██████ noted the PA Request stated the Appellant was attending school ██████ hours per week, and according to policy this placed the Appellant in the category labeled Factor III School. Nurse ██████ said with the Appellant in the Medium classification for Intensity of Care, Appellant would receive a maximum of ██████ hours per day of PDN. Nurse ██████ reviewed the medical documentation submitted with the PA request from ██████ dated ██████ office visit notes from ██████ N.P. dated ██████, and the nursing notes from ██████ covering ██████ to ██████. (Exhibit p. 17).

Nurse ██████ stated she specifically reviewed the visit with ██████ on ██████ ██████ noting the Appellant had been seen for an evaluation of seizures. The report referenced an abnormal EEG and indicates the Appellant was given a prescription for Keppra and would be seen for a follow-up in ██████ months. (Exhibit A, pp. 33-36).

Nurse ██████ also reviewed the report by ██████ N.P. dated ██████ indicating that since her last visit on ██████ Appellant has not had any emergency room visits and had not been hospitalized. It indicated Appellant's mother reported she is suctioned ██████ to ██████ times per day; tip suctiones ██████ times per day and secretions are normal. Appellant had not had any fevers or upper respiratory symptoms. The report indicated Appellant was on a ventilator ██████ hours per day; was currently not using oxygen; and, was using a vest ██████ a day for airway clearance. The report also mentioned the Appellant was doing well at school. (Exhibit A, pp. 77-81).

Nurse ██████ said she also reviewed the nursing notes from the ██████. Her review of the nurses notes did not indicate there was any severe illness that would indicate the Appellant would be in the High category for Intensity of Care. Nurse ██████ review of the nursing notes indicated the Appellant was currently stable, at her baseline, and was not showing instability at this time. Nurse ██████ further stated she received additional information after the notice was sent out on ██████ stating the Appellant's PDN would be stepped down to ██████ hours per day. Nurse ██████ stated the additional information reinforced her determination that Appellant's ██████ hours per day of PDN services should not be reinstated.

Nurse ██████ stated there was no request for an exception made by the parents in this case. She stated the PDN is a transitional benefit to help the parents become independent in the beneficiary's care until they age out at age ██████

On cross examination, Nurse ██████ stated in reviewing PA requests they rely on the information submitted by the agency provider along with the PA request. Nurse ██████ defended her determination that the Appellant fell within the Medium category for Intensity of Care. She stated the Medium category was more appropriate for the Appellant because she has not required hospitalization, the Medium category also requires the nursing assessments and judgments to be carried out by a licensed nurse, and includes beneficiaries with a higher need for nursing assessments and judgments

due to their inability to communicate and direct their own care. Nurse ██████ reiterated that she had to base her determination on the documentation submitted by Nurse ██████ along with the PA request. She was aware that the Appellant was ventilator dependent ██████. The documentation showed that her seizures were controlled, but the nurses' notes submitted with the PA request did not indicate how often the Appellant becomes disconnected from the ventilator during the day. Ms. ██████ stated it was the agency provider's responsibility to submit documentation to support their request for PDN services.

In response, Appellant's mother/representative and the provider's Nurse Case Manager testified during the hearing. Appellant's mother indicated she believed the Appellant qualifies under the High category for Intensity of Care. Appellant's mother asserted that nursing assessments and judgments are required at all times during a ██████ hour period in order to prevent the Appellant's death. She also asserted that with ██████ caregivers who work full time out of the home, and if you use the high category for intensity of care, the Appellant should receive between ██████ and ██████ hours per day of PDN services. Appellant's mother acknowledged that when the PA request was submitted the Appellant was in school ██████ hours per week, but indicated they reduced the Appellant's school hours to ██████ hours per day after she went back to school in ██████, because seizures, fatigue, and illnesses had become an issue. Appellant's mother indicated the Appellant was their child that required the most complex care. She indicated the Appellant truly requires ██████ hour intensive care, but they are only requesting ██████ hours of PDN services per day.

Nurse ██████ testified she was the RN Case Manager for the Appellant. She said she was flabbergasted at the notice of reduction issued in this case for the Appellant's PDN services. Nurse ██████ said the Appellant was quite healthy during the ██████ day period reflected in the medical records she submitted along with the PA request. Nurse ██████ stated she requested a continuation of the ██████ hours of PDN services and she believes the family needs the ██████ hours of PDN the Appellant was previously receiving. Nurse ██████ acknowledged that she supervises the nurses attending the Appellant. She also acknowledged that the nurses' notes did not document every time the Appellant became disconnected from the ventilator.

Based upon the medical documentation submitted with the PA request, the Department properly determined that the Appellant fell into the Medium Intensity of Care category, and based upon the fact it was reported the Appellant attended school ██████ hours per week, the Decision Guide limits her to a maximum of ██████ hours per day of PDN services. According to the information submitted along with the PA request on ██████, the Department's notice of a reduction in services issued on ██████ should 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 reduced Appellant's private duty nursing

[REDACTED]
Docket No. 2014-23936 PAC
Decision and Order

services based upon the medical records submitted along with the Appellant's PA request.

IT IS THEREFORE ORDERED THAT:

Respondent's decision is **AFFIRMED**.

William D Bond

William D. Bond
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

WDB/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.