

**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.** 2014-35396 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, a hearing was held on ██████████, Appellant's mother, appeared and testified on Appellant's behalf. ██████████ 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 terminate 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 been diagnosed with acute chronic respiratory distress and who had a tracheostomy for █ years. (Respondent's Exhibit A, pages 13, 22, 44).
2. Due to his medical conditions, Appellant has been receiving PDN services █ hours per day, █ days a week through the Department. (Respondent's Exhibit A, page 43; Testimony of ██████████).
3. The PDN services are being provided by ██████████. (Respondent's Exhibit A, pages 22-41).

4. In the most recent authorization of PDN services made by the Department, Appellant approved for services through ██████████ (Respondent's Exhibit A, page 43; Testimony of ██████████).
5. On ██████████, Appellant was successfully decannulated at the ██████████ and discharged to his home in stable condition. (Respondent's Exhibit A, pages 13-19).
6. On ██████████, after receiving information regarding the decannulation, the Department requested the hospital discharge summary and additional information from ██████████. (Respondent's Exhibit A, page 42).
7. On ██████████ and ██████████, ██████████, an RN, MSN, and Administrator at ██████████ notified Appellant's mother and the Department that, due to Appellant's significant improvement, skilled nursing services are no longer clinically indicated and he no longer met the criteria for such services. (Respondent's Exhibit A, pages 10, 12).
8. ██████████ letters also indicated that ██████████ would be discontinuing services on ██████████. (Respondent's Exhibit A, pages 10, 12).
9. ██████████ provided the requested information to the Department and that medical documentation indicated that the nurses were no longer suctioning Appellant; he had no signs or symptoms of respiratory distress; and he was adjusting well to the decannulation and breathing treatments. (Respondent's Exhibit A, pages 22-41; Testimony of ██████████).
10. On ██████████, and ██████████ the Department sent Appellant's mother written notice that his PDN services would be terminated effective ██████████ (Respondent's Exhibit A, pages 5-8).<sup>1</sup>
11. Both notices stated that, based on a review of the medical documentation submitted, Appellant no longer met medical criteria for PDN services as he had been successfully decannulated and discharged home in stable condition; was adjusting well to decannulation, with no signs or symptoms of respiratory distress; and the provider of the services had determined that the skilled nursing services were no longer necessary. (Respondent's Exhibit A, pages 5-8).

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<sup>1</sup> The ██████████, was intended as a revision of the earlier letter and provided additional information. (Respondent's Exhibit A, pages 5-8; Testimony of ██████████).

12. Appellant's PDN services temporarily stopped on ██████████ (Testimony of Appellant's representative; Testimony of ██████████).
13. 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).
14. Due to the pending appeal and the lack of adequate advance notice from the Department regarding the termination of PDN services, Appellant's PDN services were reinstated on ██████████. (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 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, April 1, 2014 version  
Private Duty Nursing Chapter, pages 1, 7*

Moreover, with respect to determining whether a beneficiary meets the criteria for PDN services, the MPM states:

### **1.6 GENERAL ELIGIBILITY REQUIREMENTS**

The beneficiary is eligible for PDN coverage when all of the following requirements are met:

- The beneficiary is eligible for Medicaid in the home/community setting (i.e., in the noninstitutional setting).
- The beneficiary is under the age of 21 and meets the medical criteria for PDN.
- PDN is appropriate, considering the beneficiary's health and medical care needs.
- PDN can be provided safely in the home setting.
- The beneficiary, his family (or guardian), the

beneficiary's physician, the Medicaid case manager, and RN (i.e., from the PDN agency or the Medicaid enrolled RN, or the supervising RN for the Medicaid enrolled LPN) have collaborated and developed an integrated plan of care (POC) that identifies and addresses the beneficiary's need for PDN. The PDN must be under the direction of the beneficiary's physician; the physician must prescribe/order the services. The POC must be signed and dated by the beneficiary's physician, RN (as described above), and by the beneficiary or beneficiary's parent/guardian. The POC must be updated at least annually or more frequently as needed based on the beneficiary's medical needs.

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### 2.3 MEDICAL CRITERIA

To qualify for PDN, the beneficiary must meet the medical criteria of either I and III below or II and III below:

<b>Medical Criteria I</b>	<b>The beneficiary is dependent daily on technology-based medical equipment to sustain life.</b> "Dependent daily on technology-based medical equipment" means: <ul style="list-style-type: none"><li>▪ Mechanical ventilation four or more hours per day or assisted respiration (Bi-PAP or CPAP); or</li><li>▪ Oral or tracheostomy suctioning 8 or more times in a 24-hour period; or</li><li>▪ Nasogastric tube feedings or medications when removal and insertion of the nasogastric tube is required,</li></ul>
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	<p>associated with complex medical problems or medical fragility; or</p> <ul style="list-style-type: none"><li>▪ Total parenteral nutrition delivered via a central line, associated with complex medical problems or medical fragility; or</li><li>▪ Continuous oxygen administration, in combination with a pulse oximeter and a documented need for observations and adjustments in the rate of oxygen administration.</li></ul>
<b>Medical Criteria II</b>	<p><b>Frequent episodes of medical instability within the past three to six months</b>, requiring skilled nursing assessments, judgments or interventions as described in III below, due to a substantiated progressively debilitating physical disorder.</p> <ul style="list-style-type: none"><li>▪ "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;</li><li>▪ "Medical instability" means emergency medical treatment in a hospital emergency room or inpatient hospitalization related to the underlying progressively debilitating physical disorder;</li></ul>

	<ul style="list-style-type: none"><li>▪ "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.</li></ul> <p>"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.</p> <ul style="list-style-type: none"><li>▪ "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</li><li>▪ "Substantiated" means documented in the clinical/medical record, including the nursing notes.</li></ul> <p>For beneficiaries described in II, the requirement for frequent</p>
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	<p>episodes of medical instability is applicable only to the initial determination of medical necessity for PDN.</p> <p>Determination of continuing eligibility for PDN for beneficiaries defined in II is based on the original need for skilled nursing assessments, judgments, or interventions as described in III below.</p>
<b>Medical Criteria III</b>	<p><b>The beneficiary requires continuous skilled nursing care on a daily basis</b> during the time when a licensed nurse is paid to provide services.</p> <ul style="list-style-type: none"><li>▪ "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.</li><li>▪ Equipment needs alone do not create the need for skilled nursing services.</li><li>▪ "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</li></ul>

	airway; injections; indwelling central venous catheter care; managing mechanical ventilation; oxygen administration and evaluation; and tracheostomy care.
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*MPM, April 1, 2014 version  
Private Duty Nursing Chapter, pages 6, 9-11*

However, just because a beneficiary meets the criteria for PDN services at one point does not mean that he or she will always qualify and the Department must review the services whenever there is a change in the beneficiary's condition:

## **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, April 1, 2014 version  
Private Duty Nursing Chapter, page 15  
(underline added by ALJ)*

Here, the Department and the provider were in agreement that the Appellant is no longer in need of PDN services and the notice stated the Appellant no longer met medical criteria for PDN services.

Appellant and his representatives bear the burden of proving by a preponderance of the evidence that the Department erred in deciding to terminate his PDN services.

For the reasons discussed below, this Administrative Law Judge finds that Appellant has not met that burden of proof.

Nurse ██████ testified that PDN services were eliminated because information submitted by the Provider ██████ showed Appellant had been successfully decannulated and discharged home in stable condition on ██████ while subsequent nursing notes indicated Appellant was adjusting well to the decannulation with no signs or symptoms of respiratory distress. In particular, the nursing notes indicated that the nurse no longer needed to suction Appellant. Acton also testified that, like her, the provider had determined that Appellant no longer met the criteria for services and that it had decided to terminate skilled nursing service as well.

Nurse ██████ further referenced the policy quoted above from the MPM providing that PDN is not a forever benefit and that changes such as tracheostomy decannulation can occur after months or years of services and a beneficiary's condition may stabilize to the point of the discontinuation of PDN altogether. Similarly, she also described why Appellant no longer met the specific criteria for services outlined in policy as he is not dependent daily on technology-based medical equipment to sustain life; has had no frequent episodes of medical instability within the past three to six months; and does not require continuous skilled nursing care on a daily basis.

In response, Appellant's representative/mother testified Appellant has improved, but his health has always been up-and-down and he only improved recently because of the services he has been receiving. She also testified that Appellant will regress if his PDN services are taken away and that she noticed a downturn during the two weeks when the services were removed. Overall, according to Appellant's representative, Appellant's breathing issues remain and the nurses must continue to provide nasal and oral suctioning.

However, the documentation in the record does not reflect or support Appellant's representative's testimony and, instead, the record only demonstrates improvement and stabilization since the decannulation. Moreover, based upon the medical documentation in the record, both the provider and Nurse Acton concluded that Appellant no longer met the criteria for services in their professional opinions.

Appellant's representative has failed to meet her burden of showing that the Department erred or that Appellant meets any of the criteria identified in the applicable policy. Accordingly, the Department's decision to terminated PDN services must 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 terminated Appellant's private duty nursing services based on the available information.

**IT IS THEREFORE ORDERED THAT:**

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

*Steven Kibit*

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

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.