

**STATE OF MICHIGAN**  
**MICHIGAN ADMINISTRATIVE HEARINGS SYSTEM**  
**FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
P.O. Box 30763, Lansing, MI 48909  
Phone: (517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF

██████████

Appellant,

**Docket No.** 15-006047 PAC

**Case No.** ██████████

**DECISION AND ORDER**

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

Upon Appellant's request for hearing, and after due notice, a telephone hearing was held on ██████████. Appellant is a minor child and did not appear to testify at the hearing. Appellant was represented at the hearing by her mother and Authorized Hearings Representative, ██████████. ██████████, Appeals Review Officer, appeared on behalf of the Respondent, Michigan Department of Health and Human Services (DHHS, Respondent or Department). ██████████, RN, Medicaid Utilization Analyst appeared and testified on Respondent's behalf.

State's Exhibit A pages 1-77 and Appellant's Exhibits 1 pages 1-8 were admitted as evidence.

**ISSUE**

Did the Department properly reduce appellant's Private Duty Nursing Service hours?

**FINDINGS OF FACT**

1. Appellant is a Medicaid beneficiary, date of birth ██████████.
2. Appellant has a diagnosis of BPD, chronic respiratory failure, dysphagia, CHARGE syndrome. State's Exhibit A page 39.
3. Appellant was receiving 12 hours of Private Duty Nursing authorized by Michigan Medicaid.
4. On ██████████, the authorized service changed and it was determined that Appellant's Private Duty Nursing Services should be reduced to 10 hours from ██████████ through ██████████.
5. On ██████████, the Department sent Appellant Notification of Transitional Reduction of Private Duty Nursing Services stating that the beneficiary no longer meets medical criteria for 12 hours of Private Duty

Nursing Services as evidenced by no Emergency room visits or inpatient hospitalizations over the past six months, use of the ventilator at night while sleeping and the use of a Passy-Muir calve while awake. Reduction in hours will be as follows: Continue 12 hours [REDACTED] through [REDACTED] with a decrease to ten hours [REDACTED] through [REDACTED]. State's Exhibit A pages 5-6.

6. On [REDACTED], Appellant filed a request for hearing with the Michigan Administrative Hearing System for the Department to contest the reduction in services and to request that services be returned to the original level.

### **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.

#### **1.10 PRIOR AUTHORIZATION**

Medicaid requires prior authorization (PA) to cover certain services before those services are rendered to the beneficiary. The purpose of PA is to review the medical need for certain services. . . .

Medicaid Provider Manual, (MPM) Practitioner,  
January 1, 2013, page 4

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)

Section 1.1 states:

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.

Medicaid Provider Manual (MPM),  
Private Duty Nursing, April 1, 2015, page 1

Section 2.3 states:

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 8 or more times in a 24-hour period; or

**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.

MPM, Private Duty Nursing,  
Section 2.3, page 11

## **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**

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.

### **Medium Category**

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.

**Low Category**

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. MPM, Private Duty Nursing, Section 2.4, page 11

The decision guide for establishing amount of Private duty Nursing indicates that a child with two or more caretakers; both work or are in school full or part-time with a medium intensity of care may receive of 6-12 hours per day. MPM, Section 2.4, page 12

Section 2.6 states:

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,  
Section 2.6, page 15

In the instant case, the Department witness testified on the record that the Appellant has a medium intensity of care determination and has two caretakers who both work. Appellant was initially authorized for 12 hours of Private Duty Nursing Services on [REDACTED], when she was on a full time ventilator. There was supposed to be a review but it did not happen. The Department discovered its error and conducted a review as was appropriate and Appellant's circumstances and condition have changed. The Department witness also stated that Appellant should have requested a hearing by [REDACTED], before the change took effect as the issue is now moot because of the passage of time.

The decision is based upon the review of medical documentation from [REDACTED] and [REDACTED] office visits dated [REDACTED] through [REDACTED]; office visit with [REDACTED] (Cardiology), dated [REDACTED]; [REDACTED] Clinic documentation with [REDACTED] NP, Sleep study report from test [REDACTED]; and nursing notes from [REDACTED] covering [REDACTED] through [REDACTED]. The review indicates a change in authorized services is warranted because: The Beneficiary no longer meets medical criteria for 12 hours of Private Duty Nursing Services as evidenced by no ER visits or Inpatient hospitalizations over the past six months, use of the ventilator at night while sleeping and the use of a Passy-Muir valve while awake. Reduction in hours will be as follows: continue 12 hours [REDACTED] through [REDACTED] with a decrease to 10 hours [REDACTED] through [REDACTED]. State's Exhibit A page 5.

Appellant's mother testified that she works part time 3 days a week from 8:00 a.m.-5:00p.m. Her husband works 5:00a.m. - 3:30p.m. No one else can watch the child. The child has a breathing monitor which has an alarm on it. Appellant's representative provided Appellant's Exhibits 1-20, which contain documentation of Appellant's care from [REDACTED] through [REDACTED] and indicates that Appellant remains on the ventilator at night from 8:00p.m. until morning, and uses oxygen during the day.

The Department appropriately sent Appellant Notification of Transitional Reduction of Private Duty Nursing Services stating that the beneficiary no longer meets medical criteria for 12 hours of Private Duty Nursing Services as evidenced by no Emergency room visits or inpatient hospitalizations over the past six months, use of the ventilator at night while sleeping and the use of a Passy-Muir calve while awake. Reduction in hours will be as follows: Continue 12 hours [REDACTED] through [REDACTED] with a decrease to ten hours [REDACTED] through [REDACTED]. The Department policy dictates that Private duty Nursing Services are a service provided which are meant to assist the family to become independent in caring for Appellant. The Department's actions are based on the medical information that was available at the time of the decision and was appropriate under the circumstances. The Department has established its case by a preponderance of the evidence and the decision must be upheld under the circumstances.

**DECISION AND ORDER**

Based on the above findings of fact and conclusions of law, the Administrative Law Judge finds that the Department has established by the necessary competent, substantial and material evidence on the record that it was acting in accordance with Department policy when it reduced appellant's hours for Private Duty Nursing Services to 10 hours based upon the information that was available to it at the time of the decision.

IT IS HEREBY ORDERED:

Accordingly, the department's Decision is **AFFIRMED**.

If you have any questions, please contact the Michigan Administrative Hearing System at (877) 833-0870.

*Landis Y. Lain*

Landis Y. Lain

Administrative Law Judge

for Nick Lyon, Director

Michigan Department of Community Health

cc:

[REDACTED]

LYL [REDACTED]

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

**\*\*\* NOTICE \*\*\***

The Michigan Administrative Hearing System 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 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 must 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.