STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
P.O. Box 30763, Lansing, MI 48909
(517) 373-0722; Fax: (517) 334-9505

IN THE MATTER OF:

[redacted],

Docket No. 15-016198 PAC
Case No. [redacted]

Appellant
_____/

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 [redacted]. Appellant is a minor child, DOB [redacted]. Appellant's mother [redacted], appeared and testified on Appellant's behalf.

[redacted], Manager of Department of Health and Human Services Appeals represented the Department. [redacted], RN, Medicaid Utilization Analyst appeared as a witness for the Department.

State's Exhibit A pages 1-60 and Appellant's Exhibit 1 were admitted as evidence on the record.

ISSUE

Did the Department properly deny Appellant's request for 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 Medicaid beneficiary DOB [redacted].

2. Appellant is diagnosed with congenital cytomegalovirus infection, microcephaly, status epilepticus, failure to thrive, dysphagia and GJ tube for nutritional and medication needs. State's Exhibit a page 12

3. On [redacted], [redacted] Service, Inc. filed a Prior Authorization request for 25 hours per week of Private Duty Nursing for Appellant.

4. On [redacted], the Department sent [redacted] Services, Inc. a request for additional information about Appellant's condition. State's Exhibit A pages 27-28

5. On [redacted], Appellant's physician filed additional information in support of Appellant's request for PDN. State's Exhibit A pages 35-42

6. On [redacted], following a review of Appellant's medical documentation, the Department sent notice to Appellant that Appellant did not meet eligibility requirements for Private Duty Nursing.

7. On [redacted], a Request for Hearing was filed on the Appellant's behalf.

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, April 1, 2013*

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

> 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.
>
> *Medicaid Provider Manual, Private Duty Nursing, Section 1, April 1, 2013.*

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 non-institutional 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.
>
> *Medicaid Provider Manual, Private Duty Nursing, Section 1.6, October 1, 2015, page 6*.

The Medicaid covered PDN service limitations are provided in the Medicaid Provider Manual, Private Duty Nursing, Section 1.7 states:

> 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).
>
> *Medicaid Provider Manual, Private Duty Nursing, Section 1.7, October 1, 2015.*

The medical criteria for PDN services are provided in the Medicaid Provider Manual, Private Duty Nursing in Section 2.3.

> 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 eight or more times in a 24-hour period; or
- Nasogastric tube feedings or medications when removal and insertion of the nasogastric tube is required, associated with complex medical problems or medical fragility; or
- Total parenteral nutrition delivered via a central line, associated with complex medical problems or medical fragility; or
- Continuous oxygen administration, in combination with a pulse oximeter and a documented need for observations and adjustments in the rate of oxygen administration.

Medical Criteria II – Frequent episodes of medical instability within the past three to six months, requiring skilled nursing assessments, judgments or interventions as described in III below, due to a substantiated progressively debilitating physical disorder.

- "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.

- "Medical instability" means emergency medical treatment in a hospital emergency room or inpatient hospitalization related to the underlying progressively debilitating physical disorder.

- "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. "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.

- "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

- "Substantiated" means documented in the clinical/medical record, including the nursing notes.

Medical Criteria III – **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.

Medicaid Provider Manual,
Private Duty Nursing Section
Section 2.3, April 1, 2013

In the instant case, the Department's Representative testified that based upon current medical documentation, Appellant uses an oxygen cannula intermittently. He has intermittent seizure activity. Skilled nursing would not prevent his seizures. Appellant does not have sufficient medical care needs to qualify for Private Duty Nursing. The Plan of Care submitted with the Prior Authorization request did not substantiate the current medical necessity for skilled nursing; did not describe the current lack of natural supports require for provision of the needed level of support and did not provide information about hospitalizations, Emergency room visits or acute physician visits. When the Department Representative requested additional information (in the form of an updated Plan of Care) from Appellant's medical provider, the exact same medical information was forwarded to the Department. Appellant does not have a tracheostomy; he does not use a ventilator or respiratory apparatus. Appellant is already authorized in his Plan of Care for 180 hours per year or respite care. The current plan of care submitted expired July 5, 2015 and is not considered current. There was no Plan of Care for continuous care, only for Respite Care. The request for PDN also did not specify what the requested skilled nursing needs were. Thus, the request for PDN was denied.

Appellant's Representative testified on the record that she cannot work because of the constant care she must give to Appellant. She has three children and is a single parent.

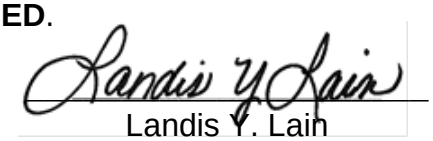
This Administrative Law Judge finds that based on the evidence submitted, Appellant failed to prove by a preponderance of evidence that the denial in PDN was improper at the time it was made. The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it denied Appellant's application for Private Duty Nursing benefits based upon its determination that Appellant did not provide sufficient evidence of medical necessity for the requested benefits. The Department's decision to deny Appellant's request for Private duty Nursing must be upheld.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

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



Landis Y. Lain
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human Services

[redacted]
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Decision and Order

LYL[redacted]

cc: [redacted]

Date Signed: November 24, 2015

Date Mailed: November 25, 2015

***** 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.