

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. 15-006115 PAC

Case No. ██████████

HEARING 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 provider ██████████, Clinical Supervisor for ██████████ (ARMC) - Home Care and Private Duty (Provider). ██████████, Appeals Review Officer, appeared on behalf of the Respondent, Michigan Department of Health and Human Services (DHHS, Respondent or Department). ██████████, RN, Medicaid Utilization Analyst, Prior Authorization Private Duty Nursing, appeared and testified on Respondent's behalf.

State's Exhibit A pages 1-23 were admitted as evidence.

ISSUE

Did the Department properly determine that Appellant's certification for Private Duty Nursing must begin on ██████████?

FINDINGS OF FACT

1. Appellant is a Medicaid beneficiary, date of birth ██████████.
2. ARMC has provided Licensed Practical Nurse (LPN) services for care of Appellant for 12 hours per day to meet her extensive health care needs.
3. Appellant was receiving 12 hours of Private Duty Nursing authorized by Michigan Medicaid with an expiration date of ██████████.
4. On ██████████, the Department received a Prior Authorization request for a renewal of ARMC private duty services with a begin date of ██████████.
5. ARMC provided private duty services to Appellant from January 1, 2015 through ██████████.

6. On ██████████, the Department sent Appellant's Provider a Notice of authorization for Private duty Services with a begin date of J ██████████ and an end date of ██████████. State's Exhibit A page 7.
7. On ██████████, the Provider filed a request for hearing with the Michigan Administrative Hearing System for the Department to contest the the certification date of ██████████ and to request payment for services provided to Appellant from ██████████ through ██████████.

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

1.4 PRIOR AUTHORIZATION

PDN services must be authorized by the Program Review Division, the Children's Waiver, or the Habilitation Supports Waiver before services are provided. (Refer to the Directory Appendix for contact information.) PDN services are authorized and billed in 15-minute incremental units (1 unit = 15 minutes). Prior authorization of a particular PDN provider to render services considers the following factors:

- Available third party resources.
- Beneficiary/family choice.
- Beneficiary's medical needs and age.
- The knowledge and appropriate nursing skills needed for the specific case.
- The understanding of the concept and delivery of home care and linkages to relevant services and health care organizations in the area served.

The Private Duty Nursing Prior Authorization – Request for Services form (MSA-0732) must be submitted when requesting PDN for persons with Medicaid coverage before services can begin and at regular intervals thereafter if continued services are determined to be necessary. A copy of the form is provided in the Forms Appendix and is also available on the MDCH website. (Refer to the Directory Appendix for website information.) This form is **not** to be used for beneficiaries enrolled in, or receiving case management services from, the Children's Waiver, Habilitation Supports Waiver, or MI Choice Waiver. Private Duty Nursing is not a benefit under CSHCS. Individuals with CSHCS coverage may be eligible for PDN under Medicaid. MPM, Prior Authorization, Private Duty Nursing, Section 1.4, page 3.

If a beneficiary receiving PDN continues to require the services after the initial authorization period, a new MSA-0732 must be submitted along with the required documentation supporting the continued need for PDN. This request must be received by the Program Review Division no less than 15 business days prior to the end of the current authorization period. Failure to do so may result in a delay of authorization for continued services which, in turn, may result in delayed or no payment for services rendered without authorization. The length of each subsequent authorization period will be determined by the Program Review Division and will be specific to each beneficiary based on several factors, including the beneficiary's medical needs and family situation. MPM, Prior Authorization, Private duty Nursing, Section 1.4, Page 4 (Emphasis Added)

1.4.C. RETROACTIVE PRIOR AUTHORIZATION

Services provided before PA is requested will not be covered unless the beneficiary was not Medicaid eligible on the date of service but became eligible retroactively. If the MDCH eligibility information does not demonstrate retroactive eligibility, then the request for retroactive PA will be denied. MPM, Private Duty Nursing, Section 1.4.C, Page 6

In the instant case, the facts are not at issue. ARMC submitted the Prior Authorization request on ██████████. ARMC did have authorization to provide services to Appellant until ██████████. ARMC should have submitted the Prior Authorization request for continued services along with supportive documentation by ██████████ in order to assure continuation of authorized services. ARMC did provide the services to Appellant despite the fact that they did not have Prior authorization to do so. ARMC did not file the Prior Authorization request until ██████████. It was the responsibility of ARMC to file the Prior Authorization request in a timely manner. Unfortunately, ARMC did not file the request for services in a timely manner. Appellant did not have an interruption in Medicaid eligibility which would have allowed the Department to approve retroactive services for ██████████ through ██████████.

The Provider's grievance centers on dissatisfaction with the Department's current policy. The Provider's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Health and Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the Department policy.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

The authority of an Administrative Law Judge is limited to determining whether the Department's actions in determining the authorization date for Private Duty Services were in accordance with Department policy. The Administrative Law Judge has no equity powers. Therefore, the Administrative Law Judge finds that 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 determined that the appropriate authorization date for Appellant's Private Duty Nursing was ██████████.

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.

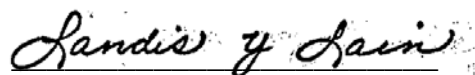
DECISION AND ORDER

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 determined that Appellant's authorization for Private Duty Nursing should begin ██████████, based upon the date it received the request for services and 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
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human
Services

[REDACTED]
Docket No. 15-006115 PAC
Hearing Decision And Order

cc:

[REDACTED]
[REDACTED]
[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 March 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.