

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

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**IN THE MATTER OF:**

██████████  
Appellant

Docket No. 15-017331 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.*, 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. ██████████, Appellant's father, also appeared. ██████████, Appeals Review Officer, represented the Department of Health and Human Services. ██████████, RN, Medicaid Utilization Analyst, appeared as a witness for the Department.

**ISSUE**

Did the Department properly authorize a transitional reduction in 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 ██████████ Medicaid beneficiary, born ██████████, who has been diagnosed with Cerebral Palsy, Bronchopulmonary Dysplasia, Sleep Apnea and Subglottic Stenosis. Appellant is non ambulatory and requires total assistance to a manual wheelchair or must be physically carried. Appellant has a tracheotomy and a feeding tube. (Exhibit A, pp 18-20; Testimony)
2. On ██████████ a prior authorization request with supporting documentation was submitted by Appellant's physician to renew Appellant's Private Duty Nursing (PDN). Appellant had been receiving 10 PDN hours per day. (Exhibit A, pp 18-76)
3. On ██████████, the Department requested additional information from Appellant's providers in order to complete a review to determine

continued medical necessity and appropriateness for PDN. (Exhibit A, pp 7-8; Testimony)

4. The additional information was received from Appellant's providers on ██████████. (Exhibit A, pp 9-17; Testimony)
5. On ██████████, following a review, the Department sent Appellant's parent written notice of a transitional reduction in PDN services. The notice indicated that 10 hours of PDN per day would continue from ██████████ through ██████████, then be reduced to 8 PDN hours per day from ██████████ through ██████████. (Exhibit A, pp 5-6; Testimony)
6. The Department based its decision on a review of medical documentation submitted from Appellant's physicians. The notice stated that based on a review of the medical documentation and nursing notes submitted by Appellant's provider, Appellant no longer met medical criteria for 10 hours of PDN services per day, as evidenced by the following:
  - The beneficiary attends school 25 or more hours per week.
  - The beneficiary has been off oxygen at night and during naps since April 24, 2015.
  - The beneficiary has had two (2) of the scheduled services of three (3) to four (4) surgeries that will close the tracheotomy.(Exhibit A, pp 5-6; Testimony)
7. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed on behalf of the minor Appellant. (Exhibit 1; Testimony)

### **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, Private Duty Nursing*, July 1, 2014 pp. 1, 7, emphasis added].

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.



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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.

<b>High Category</b>	<b>Medium Category</b>	<b>Low Category</b>
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.

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.

### Decision Guide for Establishing Maximum Amount of Private Duty Nursing to be Authorized on a Daily Basis

FAMILY SITUATION/ RESOURCE CONSIDERATIONS		INTENSITY OF CARE		
		Average Number of Hours Per Day		
		LOW	MEDIUM	HIGH
<b>Factor I – Availability of Caregivers Living in the Home</b>	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
<b>Factor II – Health Status of Caregiver(s)</b>	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
<b>Factor III – School *</b>	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"> <li>▪ Of any age in a center-based school program for more than 25 hours per week; or</li> <li>▪ Age six and older for whom there is no medical justification for a homebound school program.</li> </ul> <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, *Private Duty Nursing*, § 2.4, July 1, 2015 pp. 11-12].

#### **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, Private Duty Nursing*, § 2.6, July 1, 2015 p. 15].

Here, it is undisputed that Appellant needs some PDN services and it is only the amount of hours authorized that is at issue. As discussed above, Appellant was receiving PDN services 10 hours per day, 7 days a week. The Department has now decided to have a transitional reduction in PDN services. The notice indicated that 10 hours of PDN per day would continue from ██████████, then be reduced to 8 PDN hours per day from ██████████. The Department based its decision on a review of medical documentation submitted from Appellant's physicians and determined that Appellant no longer met medical criteria for 10 hours of PDN services per day.

Appellant bears the burden of proving by a preponderance of 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.

The Department's RN, Medicaid Utilization Analyst testified that on ██████████, a prior authorization request with supporting documentation was submitted by Appellant's physician to renew Appellant's Private Duty Nursing (PDN). Appellant had been receiving 10 PDN hours per day, 7 days per week. The Department's RN, Medicaid Utilization Analyst indicated that on September 10, 2015, following a review, she sent Appellant's parent written notice of a transitional reduction in PDN services. The notice indicated that 10 hours of PDN per day would continue from September 1, 2015 through September 30, 2015, then be reduced to 8 PDN hours per day from October 1, 2015 through January 31, 2016. The Department's RN, Medicaid Utilization Analyst testified that the decision was based on a review of medical documentation submitted from Appellant's physicians. The Department's RN, Medicaid Utilization Analyst specifically indicated that Appellant no longer met medical criteria for 10 hours of PDN services per day because the beneficiary attends school 25 or more hours per week, the beneficiary has been off oxygen at night and during naps since April 24, 2015, and the beneficiary has had two (2) of the scheduled services of three (3) to four (4) surgeries that will close the tracheotomy.

The Department's RN, Medicaid Utilization Analyst indicated that based on these factors, Appellant fell into Factor III-School, in the Medium Category, meaning that she was entitled to a maximum of 8 PDN hours per day.

Appellant's mother testified that when they adopted Appellant at 6 months old, they were told that she would always get nursing care paid for by the State. Appellant's mother indicated that Appellant did have the third scheduled surgery on ██████████ ██████████ but that Appellant's tracheotomy collapsed, making it impossible to remove. Appellant's mother testified that the doctors informed her that the tracheotomy would now have to remain in place for the foreseeable future. Appellant's mother also questioned the number of hours Appellant was reported to be in school and indicated that with her health conditions, Appellant misses a lot of school and only attends Monday through Thursday, not 5 days per week as it indicates in the prior authorization request. Appellant's mother testified that on some days Appellant needs suctioning of her tracheotomy 8-12 times per hour, while other days she may only require suctioning once every hour. Appellant's mother did indicate that the family has weaned Appellant off of oxygen overnight, but that she still occasionally needs oxygen at night when her stats drop. Appellant's mother testified that Appellant requires 24/7 care and monitoring and she is currently the only caregiver as her husband recently had heart surgery and can no longer lift Appellant. Appellant's mother also indicated that she works outside of the home on a full-time basis and has 4 other children to raise. Appellant's mother testified that while Appellant is ██████████ she has the mindset of a 2-3 year old and will sometimes pull her tracheotomy out. Appellant's mother indicated that the family also receives services through Macomb County Community Mental Health, including 32 hours of respite per month. Appellant's mother also indicated that the family receives an adoption subsidy for Appellant, which goes towards equipment and medical co-pays for Appellant. Appellant's mother indicated that she puts in very long hours caring for Appellant and barely gets any sleep at night.

In response, the Department's RN, Medicaid Utilization Analyst testified that she has to rely on the information provided in the prior authorization request and, according to that information, Appellant attends school over 32 hours per week. The Department's RN, Medicaid Utilization Analyst also indicated that the fact that the third surgery to remove Appellant's tracheotomy failed does not change the authorization at issue here.

Based upon the medical documentation submitted, the Department properly determined that a transitional reduction in PDN was warranted. Appellant has failed to meet her burden of showing by a preponderance of evidence that the Department erred in authorizing a transitional reduction in her PDN services. Clearly, Appellant has very significant health issues, requires an enormous amount of care and Appellant's family should be commended for the constant care that they provide to their daughter. However, based on policy, it is clear that since Appellant falls into the Medium Category of PDN and, because she is in school more than 25 hours per week, the maximum PDN she can receive per day is 8 hours. Furthermore, the Department considered that Appellant's condition is improving somewhat, evidenced by the fact that she has been weaned off of oxygen at night. According to the information submitted, the Department's notice of a transitional reduction in services should be affirmed.

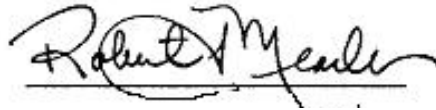
## **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of

law, decides that the Department properly authorized a transitional reduction in the Appellant's private duty nursing services based on the medical records submitted.

**IT IS THEREFORE ORDERED THAT:**

Respondent's decision is **AFFIRMED**.



Robert J. Meade  
Administrative Law Judge  
for Nick Lyon, Director  
Michigan Department of  
Health and Human Services

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

[REDACTED]

cc: [REDACTED]

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

The Michigan Administrative Hearing System for the Department of Health and Human Services 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 Health and Human Services 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.