STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

[redacted]

Docket No. 15-023084 PAC
Case No. [redacted]

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.*, upon a request for a hearing filed on behalf of the minor Appellant.

After due notice, a hearing was held on [redacted]. [redacted], Appellant's mother, appeared and testified on Appellant's behalf. [redacted], Appellant's father; [redacted], Clinic Services Manager, [redacted]; and [redacted], RN, General Manager, [redacted] appeared as witnesses for Appellant. [redacted], Appeals Review Officer, represented the Department of Health and Human Services. [redacted] 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 an [redacted] year old Medicaid beneficiary, born [redacted] who was born premature at 27 weeks in a quadruplet multi-gestational pregnancy. Appellant's diagnosis include chronic lung disease, increased tracheal secretions, infection with resistance pseudomonas, cerebral palsy, developmental delay, short guy syndrome, dysphagia/feeding difficulties, GERD, subglottic stenosis, visual impairment, history of seizures, history of MRSA, history of recurrent pneumonias and UTI, history of hypoglycemia, hyponatremia, history of ROP, history of central line infection and multiple other issues. (Exhibit A, p 11, Exhibit 2; Testimony)

2. Appellant has Intestinal Failure with Intestinal Pseudo Obstruction requiring Total Parenteral Nutrition (TPN). A tunneled central line is in place to deliver Appellant's TPN. The line delivers Appellant's total nutrition, hydration and intravenous medications. Appellant also has a Gastrojejunal Tube in place to deliver trophic jejunal feedings and to allow decompression of her stomach. (Exhibit 2; Testimony)

3. On [redacted], a prior authorization request with supporting documentation was submitted by Appellant's provider to renew Appellant's Private Duty Nursing (PDN). Appellant had been receiving 12 PDN hours per day. (Exhibit A, pp 11-94; Testimony)

4. On [redacted], following a review, the Department sent Appellant's parents written notice of a transitional reduction in PDN services. The notice indicated that 12 hours of PDN would continue through [redacted], then be reduced to 10 PDN hours per day from [redacted] through [redacted], then decrease to 8 PDN hours per day from [redacted] through [redacted] (Exhibit A, pp 7-8; Testimony)

5. The Department based its decision on a review of medical documentation submitted from Appellant's providers and 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 12 hours of PDN services per day, as evidenced by the following:

   - The beneficiary has had no hospitalizations or ER visits within the last six months.
   - The beneficiary is attending school 35 hours per week.

   (Exhibit A, pp 7-8; Testimony)

6. On [redacted], 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.
>
> 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	Medium Category	Low 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.	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
Factor I – Availability of Caregivers Living in the Home	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
Factor II – Health Status of Caregiver(s)	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
Factor III – School *	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

* Factor III limits the maximum number of hours which can be authorized for a beneficiary:

- Of any age in a center-based school program for more than 25 hours per week; or
- Age six and older for whom there is no medical justification for a homebound school program.

In both cases, the lesser of the maximum "allowable" for Factors I and II, or the maximum specified for Factor III, applies.

[*MPM, Private Duty Nursing*, § 2.4, October 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, October 1, 2015 p. 15].

Here, it is undisputed that Appellant needs PDN services and it is only the amount of hours authorized that is at issue. As discussed above, Appellant was receiving PDN services 12 hours per day, 7 days a week. The Department has now decided to have a transitional reduction in PDN services. The notice indicated that 12 hours of PDN would continue through [redacted], then be reduced to 10 PDN hours per day from [redacted] through [redacted], then decrease to 8 PDN hours per day from [redacted] through [redacted]. The Department based its decision on a review of medical documentation submitted from Appellant's physicians and providers and determined that Appellant no longer met medical criteria for 12 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 November 1, 2015, 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 12 PDN hours per day, 7 days per week. The Department's RN, Medicaid Utilization Analyst indicated that on [redacted], following a review, she sent Appellant's parent written notice of a transitional reduction in PDN services. The notice indicated that 12 hours of PDN would continue through [redacted], then be reduced to 10 PDN hours per day from [redacted] through [redacted] then decrease to 8 PDN hours per day from [redacted] through [redacted]. The Department's RN, Medicaid Utilization Analyst testified that the decision was based on a review of medical documentation submitted from Appellant's physicians and providers. The Department's RN, Medicaid Utilization Analyst specifically indicated that Appellant no longer met medical criteria for 12 hours of PDN services per day because the beneficiary had no hospitalizations or ER visits within the last six months and attends school 25 or more hours per week.

The Department's RN, Medicaid Utilization Analyst referred to several telephone conversations a nurse reviewer had with Appellant's mother during the review period where Appellant's mother indicated generally that Appellant was stable and doing well. (Exhibit A, pp 24-30). The Department's RN, Medicaid Utilization Analyst also referred to medical records which showed that Appellant's parents were able to complete Appellant's ethanol flush and that Appellant's central line and cap were only changed weekly. (Exhibit A, pp 36-47). The Department's RN, Medicaid Utilization Analyst pointed out that Appellant was also provided nursing care while in school, that her labs were only done once per month, and her stats were generally very good. The Department's RN, Medicaid Utilization Analyst indicated that based on all of these factors, according to the above policy, 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 while Appellant was not hospitalized during the period the Department looked at, she was recently hospitalized in [redacted] with a very serious condition. Appellant's mother indicated that Appellant's condition is terminal and that they try very hard to keep her out of the hospital, where she has to be isolated and is subject to more potential infections. Appellant's mother testified that they can only accomplish those goals with the 12 PDN hours per day they are currently receiving. Appellant's mother pointed out that during Appellant's recent hospital visit, the doctors did not admit Appellant only because they knew she had 12 PDN hours per day at home.

Regarding school, Appellant's mother testified that while Appellant is authorized to attend school 35 hours per week, she missed 29.5 out of 85 school days in the last semester due to illness and appointments. Regarding the phone encounters with the nurse reviewer, Appellant's mother indicated that it is understood that the nurse reviewer is very busy and that when she tells the nurse Appellant is stable that does not mean she is doing fine. Appellant's mother indicated that Appellant has chronic diarrhea and diabetes in addition to all of her other medical problems and she does not go into detail with the nurse reviewer.

Appellant's mother testified that she and her husband do flush Appellant's central line, but that is only because the line is out only three hours per day and therefore cannot be flushed during the time the nurses are caring for Appellant. Appellant's mother indicated that they do try to change Appellant's dressings only weekly to avoid further damage to her, but that the dressing often has to be changed more often.

Appellant's mother indicated that Appellant's health status is in a constant decline and her condition is terminal. Appellant's mother testified that when Appellant has a setback, she never gets back to where she was before – she is always declining. Appellant's mother pointed out that Appellant's central line has had to be replaced several times and there are only so many places on her body the line can be placed. Appellant's mother indicated that when there are no more places to put the central line, Appellant will die. Appellant's mother also pointed out that the nurse at school has to call her at least four times per week for advice on how to care for Appellant. Appellant's mother compared reducing Appellant's PDN to playing Russian roulette with her life because the risk is so great if Appellant does not get the care she needs. Appellant's mother indicated that she and her husband would love to care for Appellant 24 hours per day but they need to sleep, they have four other children, and jobs to consider. Appellant's mother testified that she fears if Appellant's PDN hours are reduced she will be so tired caring for Appellant she will make a mistake.

Appellant's father pointed out that the only charting included in the records comes from the nurses, who care for Appellant at night. Appellant's father testified that he and his wife do suctioning during the day, and suctioning is also done at school. Appellant's father indicated that suctioning is required more often when Appellant is up and active. Appellant's father also indicated that the nurses do oral suctioning in addition to deep suctioning.

The Clinical Services Manager at [redacted] (The Clinical Manager) testified that Appellant is not progressing but is instead in a very steady and consistent decline. The Clinical Manager indicated that every hospitalization or infection sets Appellant back and she does not bounce back from those set backs. The Clinical Manager pointed out that Appellant receives more potassium than an average sized adult would need, yet her potassium levels remain unexplainably low, which requires close monitoring. The Clinical Manager referred to the letter he authored in Exhibit 2, which indicates that Appellant does need more suctioning during the day, when she is active. The Clinical Manager testified that Appellant's digestive track is getting worse. The Clinical Manager pointed out that Appellant has to receive not only her food but also her

medication through her central line, which makes it very tricky and complicated to get the right amount of food and medication into Appellant's system. The Clinical Manager testified that to refer to Appellant as stable is a misunderstanding of her condition because anytime she is sick she does not bounce back. The Clinical Manager testified that ultimately organ failure is inevitable for Appellant, which will further complicate her care. The Clinical Manager testified that he understood the criteria the Department was using in making its determination, but that Appellant has numerous other conditions and care needs that are not reflected in that criteria.

The RN, General Manager at [redacted] (General Manager) indicated that she would reiterate what the other witnesses had said on Appellant's behalf. The General Manager indicated that Appellant's case is not one that falls into the "transient" category of PDN because even through Appellant's parents have learned to take care of Appellant, Appellant's condition is continuously worsening and she will need more care as time goes on. The General Manager indicated that Appellant's parents are very honest and forthright and there should be no red flags regarding the care they give to their daughter. The General Manager opined that other factors, including Appellant's terminal condition, should be taken into consideration when reviewing Appellant's need for PDN.

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 35 hours per week and had no hospitalizations within the past 6 months preceding the review. The Department's RN, Medicaid Utilization Analyst indicated that if Appellant's condition changes, the hours can be reinstated, but the hours must be supported by the documentation provided by Appellant's physicians and providers.

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, it was clear from the documentation submitted that Appellant falls into the Medium Category of PDN and, because that documentation also indicated that Appellant is in school more than 25 hours per week, the maximum PDN she can receive per day is 8 hours. Based on that information, the Department's decision was proper. Unfortunately, the undersigned also cannot consider documentation or information that the Department did not have on hand when its decision was made. With that said, it appears that the documentation submitted may not have given the Department a clear and total picture of Appellant's condition and the undersigned would encourage Appellant's parents and providers to seek a reinstatement of her PDN hours based on a more accurate picture, including Appellant's recent hospitalization, her absences from school, and her overall declining condition. However, 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 Mailed: [redacted]

RJM/cg

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.