RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[redacted]

Date Mailed: January 26, 2017
MAHS Docket No.: 16-012671
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and upon a request for a hearing filed on Petitioner's behalf.

After due notice, and multiple adjournments, an in-person hearing was held on January 18, 2017. [redacted], Petitioner's mother, appeared and testified on Petitioner's behalf. [redacted], one of Petitioner's nurses, also testified as a witness for Petitioner. Petitioner was present during the hearing. [redacted], Medicaid Fair Hearing Officer, represented the Respondent [redacted], the Habilitation Supports Waiver Nurse Assessor, and [redacted], Director of Services for People with Intellectual and Developmental Disabilities, from the Guidance Center testified as witnesses for Respondent. [redacted], Director of Quality; [redacted], Supervisor of Supports Coordinators; [redacted], Supports Coordinator; and [redacted], Supervisor of Quality; from The Guidance Center were also present during the hearing.

ISSUE

Did Respondent properly reduce Petitioner'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. Petitioner is a twenty-eight-year-old Medicaid beneficiary who has been diagnosed with cerebral palsy with neuromuscular weakness and severe developmental delay; obstructive sleep apnea; severe scoliosis requiring tracheostomy tube placement and nocturnal ventilation; and a history of movement disorder, upper respiratory infections, pneumonia; asthma,

dysphagia and grand mal seizures. (Exhibit 1, pages 5-6; Exhibit A, pages 9-10).

2. Petitioner's parents provide informal supports and have durable power of attorney for Petitioner. (Exhibit 1, page 6; Testimony of Petitioner's representative).

3. Petitioner was also previously authorized for 24 hours per day, 7 days per week, of PDN services through Respondent pursuant to the Habilitation Supports Waiver (HSW). (Exhibit A, page 9; Testimony of Petitioner's representative).

4. The PDN is provided by three nursing agencies, including [redacted] and [redacted]. (Testimony of Petitioner's representative).

5. The Plan of Care for [redacted] describes a nurse providing medication administration; conducting vent checks every shift; checking vital signs every shift; providing trach care every shift; using a cough assist device as needed; 1:1 feeding; bathing Petitioner; and interacting with Petitioner. (Exhibit 2, pages 1-2).

6. The plan also notes that the nurse needs to assess for seizure activity; maintain seizure precautions; maintain proper placement of trach during seizures; record details about seizure; and call 9-1-1 for condition of status epilepticus. (Exhibit 2, page 3).

7. The nurse should further monitor Petitioner for movement disorder; assist or provide total care in activities of daily living; and administer medications to promote bowel movements and track bowel elimination pattern. (Exhibit 2, paged 4, 6-7).

8. The Plan of Care for [redacted] identifies a goal of Petitioner remaining free from falls, skin breakdowns and injuries, and it describes a nurse checking vitals and reporting results as needed; making respiratory assessments every 2 hours and as needed; cough assist prior to suctioning and suctioning as needed; and ventilator checks every shift. (Exhibit 3, pages 1, 4).

9. The nurse is also to provide personal care, including monitoring Petitioner's skin and reporting any changes, and reposition Petitioner every two hours for pressure relief. (Exhibit 3, pages 5-7).

10. On June 30, 2016, a Nurse Assessor for the Guidance Center completed both an in-home assessment of Petitioner's PDN needs and a PDN Eligibility Determination Worksheet. (Exhibit A, pages 9-10).

11. During that assessment, the Nurse Assessor found that Petitioner required PDN services and fell into a Medium Intensity of Care Category. (Exhibit A, pages 9-10).

12. Her report also documented that Petitioner received deep oral suctioning two-to-three times a shift; she was on a vent at night, from approximately 9:00 p.m. to 5:00 a.m.; she uses a pulse oximeter as needed; Petitioner eats orally, but must be monitored; and Petitioner uses a nebulizer as ordered, with cough assistance a few times per shift. (Exhibit A, page 12). (Exhibit A, pages 11-12, 14).

13. Following the completion of the assessment, the nurse assessor recommended that Petitioner be approved for 12 hours per day, 7 days per week, of PDN services. (Exhibit A, page 9).

14. On or about August 16, 2016, Respondent sent Petitioner written notice that, effective September 1, 2016, her PDN services would be reduced to 12 hours per day, 7 days per week. (Exhibit 1, pages 3-4).

15. On August 22, 2016, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed on Petitioner's behalf in this matter regarding that reduction. (Exhibit 1, pages 1-6).

16. Petitioner's PDN services have remained at 24 hours a day, 7 days a week, while this matter is pending. (Testimony of Director of Services for People with Intellectual and Developmental Disabilities).

CONCLUSIONS OF LAW

The Medical Assistance Program (MA) 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:

> Title XIX of the Social Security Act, enacted in 1965, authorizes Federal grants to States for medical assistance to low-income persons who are age 65 or over, blind, disabled, or members of families with dependent children or qualified pregnant women or children. The program is jointly financed by the Federal and State governments and administered by States. Within broad Federal rules, each State decides eligible groups, types and range of services, payment levels for services, and administrative and operating procedures. Payments for services are made

> directly by the State to the individuals or entities that furnish the services.

42 CFR 430.0

> The State plan is a comprehensive written statement submitted by the agency describing the nature and scope of its Medicaid program and giving assurance that it will be administered in conformity with the specific requirements of title XIX, the regulations in this Chapter IV, and other applicable official issuances of the Department. The State plan contains all information necessary for CMS to determine whether the plan can be approved to serve as a basis for Federal financial participation (FFP) in the State program.

42 CFR 430.10

Section 1915(b) of the Social Security Act provides:

> The Secretary, to the extent he finds it to be cost-effective and efficient and not inconsistent with the purposes of this subchapter, may waive such requirements of section 1396a of this title (other than subsection (s) of this section) (other than sections 1396a(a)(15), 1396a(bb), and 1396a(a)(10)(A) of this title insofar as it requires provision of the care and services described in section 1396d(a)(2)(C) of this title) as may be necessary for a State…

42 USC 1396n(b)

The State of Michigan has opted to simultaneously utilize the authorities of the 1915(b) and 1915 (c) programs to provide a continuum of services to disabled and/or elderly populations. Under approval from the Centers for Medicare and Medicaid Services (CMS) the Department of Health and Human Services (DHHS) operates a section 1915(b) Medicaid Managed Specialty Services and Support program waiver in conjunction with a section 1915(c).

Here, Petitioner has also been approved for services through Respondent under the Habilitation Supports Waiver (HSW) and, with respect to that waiver, the Medicaid Provider Policy Manual (MPM) generally provides:

> **SECTION 15 – HABILITATION SUPPORTS WAIVER FOR PERSONS WITH DEVELOPMENTAL DISABILITIES**
>
> Beneficiaries with developmental disabilities may be enrolled in Michigan's Habilitation Supports Waiver (HSW) and receive the supports and services as defined in this section. HSW beneficiaries may also receive other Medicaid state plan or additional/B3 services. A HSW beneficiary must receive at least one HSW service per month in order to retain eligibility. *Medical necessity criteria should be used in determining the amount, duration, and scope of services and supports to be used.* The beneficiary's services and supports that are to be provided under the auspices of the PIHP must be specified in his individual plan of services developed through the person-centered planning process.

MPM, July 1, 2016 version
Behavioral Health and Intellectual and Developmental Disability Supports and Services
Pages 102
(Emphasis added)

The specific HSW service at issue in this case is Private Duty Nursing (PDN) and, with respect to PDN, the MPM provides in part:

> *Private Duty Nursing (PDN) services are skilled nursing interventions provided to individuals age 21 and older, up to a maximum of 16 hours per day, to meet an individual's health needs that are directly related to his developmental disability.* PDN includes the provision of nursing assessment, treatment and observation provided by licensed nurses within the scope of the State's Nurse Practice Act, consistent with physician's orders and in accordance with the written health care plan which is part of the beneficiary's individual plan of services (IPOS). PDN services are for beneficiaries who require more individual and continuous care than periodic or intermittent nursing available through state plan services, e.g., Home Health. The individual receiving PDN must also require at least one of the following habilitative services, whether being provided by natural supports or through the waiver.
>
> - Community living supports

- Out-of-home non-vocational habilitation

- Prevocational or supported employment

To be determined eligible for PDN services, the PIHP must find that the beneficiary meets Medical Criteria I as well as Medical Criteria III, or meets Medical Criteria II as well as Medical Criteria III. Regardless of whether the beneficiary meets Medical Criteria I or II, the beneficiary must also meet Medical Criteria III.

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 rate-dependent ventilation (four or more hours per day), or assisted rate-dependent respiration (e.g., some models of Bi-PAP); or

- Deep oral (past the tonsils) 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 (eight or more hours per day), in combination with a pulse oximeter and a documented need for skilled nursing assessment, judgment, and intervention in the rate of oxygen administration. This would not be met if oxygen adjustment is done only according to a written protocol with no skilled assessment, judgment or intervention required. Continuous use of oxygen therapy is a covered Medicaid benefit for beneficiaries age 21 and older when tested at rest while breathing room air and the oxygen saturation rate is 88 percent or below, or the PO2 level is 55 mm HG or below.

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 medical condition directly related to the developmental disability.

Definitions:

- "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 that is qualified to furnish such services and 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 would result in placing the health of the individual in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

* * *

- "Directly related to the developmental disability" means an illness, diagnosis, or syndrome occurred during the developmental period prior to age 22, is likely to continue indefinitely, and results in significant functional limitations in 3 or more areas of life activity. Illnesses or disability acquired after the developmental period, such as stroke or heart conditions, would not be considered directly related to the developmental disability.

- "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.

Definitions:

- "Continuous" means at least once every 3 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, and documentation to support the frequency and scope of those decisions or actions;*

  - managing mechanical rate-dependent ventilation or assisted rate-dependent respiration (e.g., some models of Bi-PAP) that is required by the beneficiary four or more hours per day;

  - *deep oral (past the tonsils) or tracheostomy suctioning;*

  - injections when there is a regular or predicted schedule, or prn injections that are required at least once per month (insulin administration is not considered a skilled nursing intervention);

  - nasogastric tube feedings or medications when removal and insertion of the nasogastric tube is required, associated with complex medical problems or medical fragility;

  - total parenteral nutrition delivered via a central line and care of the central line;

- *continuous oxygen administration (eight or more hours per day), in combination with a pulse oximeter, and a documented need for adjustments in the rate of oxygen administration requiring skilled nursing assessments, judgments and interventions. This would not be met if oxygen adjustment is done only according to a written protocol with no skilled assessment, judgment or intervention required. Continuous use of oxygen therapy is a covered Medicaid benefit for beneficiaries age 21 and older when tested at rest while breathing room air and the oxygen saturation rate is 88 percent or below, or the PO2 level is 55 mm HG or below;*

- monitoring fluid and electrolyte balances where imbalances may occur rapidly due to complex medical problems or medical fragility. Monitoring by a skilled nurse would include maintaining strict intake and output, monitoring skin for edema or dehydration, and watching for cardiac and respiratory signs and symptoms. Taking routine blood pressure and pulse once per shift that does not require any skilled assessment, judgment or intervention at least once every three hours during a 24-hour period, as documented in the nursing notes, would not be considered skilled nursing.

Once the Medical Criteria eligibility for PDN has been established, and as part of determining the amount of PDN a beneficiary is eligible for, the 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 amount 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, 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 one 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, 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.

The amount of PDN hours authorized represents a monthly total determined by calculating an average amount of PDN per day multiplied by the number of days in the month. The beneficiary has the flexibility to use the hours as needed

during the month, not to exceed the total monthly authorized amount.

The amount of PDN (i.e., the number of hours that can be authorized for a beneficiary) is determined through the person-centered planning process to address the individual's unique needs and circumstances. Factors to be considered should include the beneficiary's care needs which establish medical necessity for PDN; the beneficiary's and family's circumstances (e.g., the availability of natural supports); and other resources for daily care (e.g., private health insurance, trusts, bequests). Although the person-centered planning process is used to determine the exact amount of PDN specified in the IPOS, in general, a beneficiary who has Low Category PDN needs would require eight or fewer hours per day, a beneficiary who has Medium Category PDN needs would require 12 or fewer hours per day, and a beneficiary who has High Category PDN needs would require 16 or fewer hours per day.

The nurse may provide personal care only when incidental to the delivery of PDN, e.g., diaper changes, but may not provide routine personal care. The provision of personal care in unlicensed homes is through Home Help, a state plan service. If the beneficiary receiving PDN services demonstrates the need for Home Help services, the IPOS must document coordination of Home Help and PDN to assure no duplication of services.

Licensed nurses provide the nursing treatments, observation, and/or teaching as ordered by a physician, and that are consistent with the written individual plan of services.

These services should be provided to a beneficiary at home or in the community. A physician's prescription is required.

The PIHP must assess and document the availability of all private health care coverage (e.g., private or commercial health insurance, Medicare, health maintenance organization, preferred provider organization, Champus, Worker's Compensation, an indemnity policy, automobile insurance) for private duty nursing and will assist the beneficiary in selecting a private duty nursing provider in accordance with available third-party coverage. This

includes private health coverage held by, or on behalf of, a beneficiary.

If a beneficiary is attending school and the Individualized Educational Plan (IEP) identifies the need for PDN during transportation to and from school and/or in the classroom, the school is responsible for providing PDN during school hours. For adults up to age 26 who are enrolled in school, PDN services are not intended to supplant services provided in school or other settings or to be provided during the times when the beneficiary would typically be in school but for the parent's choice to home-school.

An exception process to ensure the beneficiary's health, safety and welfare is available if the beneficiary's needs exceed the 16-hours-per-day maximum for a time-limited period not to exceed six months. Factors underlying the need for additional PDN must be identified in the beneficiary's plan, including strategies directed toward resolving the factors necessitating the exception, if applicable. Documentation must substantiate all of the following:

- Current medical necessity for the exception; and
- Additional PDN services are essential to the successful implementation of the beneficiary's written plan of care, and are essential to maintain the beneficiary within the least restrictive, safe, and humane environment suitable to his condition.

Exceptions must be based on the increased identified medical needs of the beneficiary or the impact on the beneficiary's needs due to the unavailability of the primary unpaid caregiver. Consideration for an exception is limited to situations outside the beneficiary's or family's control that place the beneficiary in jeopardy of serious injury or significant deterioration of health status. Exceptions may be considered for either of the following general situations:

- A temporary alteration in the beneficiary's care needs, resulting in one or both of the following:
  - A temporary increase in the intensity of required assessments, judgments, and interventions.

- A temporary need for additional training to enable the primary caregiver(s) to identify and meet the beneficiary's care needs.

The total number of additional PDN hours per day will be based on the physician's documentation of the extent and duration of the beneficiary's increased medical needs for a maximum of six months.

- The temporary inability of the primary unpaid caregiver(s) to provide the required care, as the result of one of the following:

  - In the event the caregiver is hospitalized, a maximum of 24 hours per day can be authorized for each day the caregiver is hospitalized. Upon discharge from the hospital, or in the event of an acute illness or injury of the caregiver, the total number of additional PDN hours per day will be based on the physician's documentation of the extent and duration of the caregiver's limitations and the needs of the beneficiary as it relates to those limitations, not to exceed six months.

  - The death of the primary caregiver. The initial amount of hours allowable under this exception is 24 hours per day for 14 days. Subsequent exceptions can be approved up to an additional 60 days, with monthly reviews thereafter by the PIHP/CMHSP.

  - The death of an immediate family member. "Immediate family member" is defined as the caregiver's spouse, partner, parent, sibling, or child. The maximum number of hours allowable under this exception criterion is 24 hours per day for a maximum of seven days.

"Inability" is defined as the caregiver is either unable to provide care, or is prevented from providing care.

"Primary caregiver" is defined as the caregiver who provides the majority of unpaid care.

"Unpaid care" is defined as care provided by a caregiver where no reimbursement is received for those services, e.g.,

> is not being paid as a Home Help provider or Community Living Supports staff.
>
> This exception is not available if the beneficiary resides in a licensed setting or in a home where all care is provided by paid caregivers.
>
> *In the event that a transition plan has been developed wherein PDN services are to be reduced or eliminated based on a determination of medical necessity, the PIHP may provide PDN for a period of time (not to exceed three months) for the purpose of training the CLS or respite aides or family and assuring a smooth transition.* In those cases, the transition plan, including amount, scope, frequency and duration of the training by nurses to aides, must be documented in the IPOS. A transition process is not intended to provide two-to-one (nurse and aide) staffing for any purpose other than for training (with limitations on duration and frequency noted in the IPOS) while the aide or family member becomes familiar with the beneficiary's care needs. This transition period is only permitted when it has been determined that PDN is not medically necessary and the beneficiary's care needs can be met by a trained CLS or respite aide.

MPM, July 1, 2016 version
Behavioral Health and Intellectual and Developmental Disability Supports and Services
Pages 111-117

It is undisputed in this case that Petitioner requires some PDN and the only issue is how much PDN should be approved, with the Respondent deciding to reduce Petitioner's services to 12 hours per day and Petitioner arguing that they should remain at 24 hours per day.

In support of the reduction, the Nurse Assessor for the Guidance Center testified that she had been assessing Petitioner for years and always recommended 12 to 16 hours per day of PDN, and that she is not sure why Petitioner has been receiving 24 hours per day of such services. She also testified that she performed the most recent nursing assessment in June of 2016 and, based on her review of several weeks of nursing notes from two nursing providers and interviews in the home, she recommended 12 hours per day. In particular, she noted that, while PDN is still necessary given Petitioner's need for deep oral suctioning two to three times a shift, there had been improvement since the previous assessment as Petitioner was stable and was no longer suffering from pneumonia or taking antibiotics; any necessary cough assist is not skilled nursing as a lay person can be trained to do it; and that Petitioner's skilled care was limited to her respiratory status. The Nurse Assessor also testified that she is

unaware of Petitioner having a history of urinary tract infections (UTIs) or skin breakdowns, and that the nursing notes she reviewed did not reflect such a need.

In response, Petitioner's representative testified she and Petitioner's father are not legally responsible for caring for Petitioner, but still want to provide a home for her and that they need 24 hours per day of PDN to do so. She also testified that Petitioner's needs have always exceeded the maximum identified in the waiver and that Petitioner has been receiving 24 hours per day, 7 days per week, of PDN since she turned eighteen-years-old. Regarding Petitioner's current status, her representative testified that, if Petitioner is alone, then she will still do things like pull out her trach, eat her clothes, or choke; Petitioner has only avoided hospitalizations because of the care she receives; Petitioner's pneumonia had resolved, but Petitioner has also had a UTI, which Petitioner has a long history of, and three seizures since that time. Petitioner's representative also testified that Petitioner's vent use is up and, while she has less suctioning than before, that is only because the vent clinic wants more cough assists and less suctioning. Petitioner's representative further testified that she does what the nurse does, including cough assists, and has to fill in for shifts when nurses miss.

One of Petitioner's nurses from [redacted] testified that the skilled nursing she provides includes administering medications; monitoring for choking and performing the Heimlich Maneuver as needed; monitoring urine for bladder infections; monitoring for skin breakdowns and applying creams when necessary; assisting Petitioner with all activities of daily living, including eating; and interpreting her vocabulary. She also testified that she is constantly performing the above care and assessing Petitioner.

Petitioner bears the burden of proving by a preponderance of evidence that the Respondent erred in reducing her PDN services. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Respondent's decision in light of the information that was available at the time the decision were made.

Given the available information and applicable policies in this case, the undersigned Administrative Law Judge finds that Petitioner has failed to meet her burden of proof and that the reduction in PDN hours must be affirmed.

As a preliminary matter, the undersigned Administrative Law Judge would note that the amount of PDN Petitioner has been receiving and seeks to continue receiving is greater than the maximum allowed by policy. The MPM expressly provides that PDN through the HSW may only be provided up to a maximum of 16 hours per day, but Petitioner has been receiving 24 hours per day of such services. Moreover, while the MPM does allow for an exception to that maximum for a time-limited period not to exceed six months, Petitioner has been exceeding the maximum for years and, regardless, her representative is not looking for an exception based on any temporary circumstances and instead wants 24 hours per day as a general matter, which is prohibited by policy.

Additionally, regarding the number of PDN hours per day that Petitioner generally needs, Petitioner has failed to show that Respondent erred. Respondent determined that Petitioner fell into the Medium Intensity of Care category and, per policy, a beneficiary who has Medium Category PDN needs would require 12 or fewer hours per day, which is what it has decided to authorize in this case.

Petitioner clearly has very significant health issues and requires an enormous amount of care, but not all of the care suggests a need for skilled nursing. For example, while Petitioner is on a ventilator at night and may need to be monitored for skin breakdowns, and have any such breakdowns reported, the skin assessments need not be performed by a nurse and the plan of care identifies a written protocol for oxygen administration. Similarly, Petitioner may need someone to administer her medications, but the definition of skilled nursing care in the MPM only discusses medications by nasogastric tube, which Petitioner does not have.

Moreover, both the plans of care admitted to the record and the testimony of Petitioner's nurse reflect that personal care is routinely being provided by the nurse and, while the above policy provides that a nurse may provide personal care when incidental to the delivery of PDN, it also prohibits the routine personal care being provided here and Petitioner's personal care needs would be more appropriately met through other State Plan services or natural supports.

Even the letter Petitioner provided from her doctor only states that Petitioner needs "alert and well rested caregivers at all times" (Exhibit A, page 15), and it does suggest that Petitioner needs a skilled nurse with her at all times.

Additionally, while there are some assessments or interventions that Petitioner needs that may require skilled nursing care, including deep oral suctioning, there is no demonstration through actual nursing notes or other evidence that any skilled nursing care is provided often enough to warrant either moving Petitioner into the High Intensity of Care Category and/or approving more than 12 hours per day of PDN. The evidence in the record also fails to reflect any history of UTIs and even the plan of care from the nursing provider Petitioner's nurse witness works for failed to reflect any history of UTIs or the need to monitor Petitioner's urine that the nurse witness testified to.

Accordingly, Petitioner has failed to meet her burden of showing that additional PDN hours are necessary and the undersigned Administrative Law Judge, therefore, finds that Respondent's decision to reduce Petitioner's PDN services to 12 hours per day should be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly reduced Petitioner's PDN services.

IT IS THEREFORE ORDERED that:

- Respondent's decision is **AFFIRMED**.

SK/tm

Steven Kibit
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

DHHS -Dept Contact [redacted]

Petitioner [redacted]

DHHS Department Rep. [redacted]

Authorized Hearing Rep. [redacted]