

Date Mailed: January 14, 2026

Docket No.: 25-043396

Case No.: [REDACTED]

Petitioner: [REDACTED]

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, upon Petitioner's request for a hearing.

After due notice, a telephone hearing was held on January 8, 2026. [REDACTED], Petitioner's father, appeared and testified on Petitioner's behalf. John Lambert, Appeals Review Officer, represented Respondent, Michigan Department of Health and Human Services (MDHHS or Department). Mellody London, RN, Prior Authorization (PA) Private Duty Nursing (PDN) Reviewer, appeared as a witness for the Department.

ISSUE

Did the Department properly deny Petitioner's request for Private Duty Nursing (PDN)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On October [REDACTED], 2025, University of Michigan Hospitals submitted a PDN prior authorization request on Petitioner's behalf, seeking up to 1,440 units per month of PDN, with a start date of "ASAP" and "ongoing" (Exhibit A, pp. 31–53; Testimony).
2. Petitioner is a minor who suffered severe traumatic brain injury (TBI) in a July 2025 dirt-bike crash, with extended PICU course, elevated intracranial pressure, and subsequent rehabilitation. Records describe paroxysmal sympathetic hyperactivity (PSH), dystonia/spasticity, dysphagia requiring G-tube feeds, and intermittent respiratory support (Exhibit A, pp. 15–26, 35–39; Testimony).
3. Pulmonology and ENT notes document: (a) post-extubation noninvasive positive pressure ventilation (NIPPV) needs; (b) inability to tolerate nighttime BiPAP due to neurostorming; (c) recommendation to use 1 L nasal cannula oxygen overnight as needed to keep O₂ saturations >92%, with monitoring and potential in-hospital sleep study if CO₂ rises; and (d) ENT flexible laryngoscopy finding no anatomic barrier to weaning from positive pressure; tracheostomy discussed as future consideration, not performed (Exhibit A, pp. 26–27, 28–31; Testimony).

-
-
4. The inpatient rehabilitation and care plans emphasize 24-hour care needs, frequent PRN medications for PSH, tube feeding regimen, mobility assistance and splinting, and home equipment (suction and PRN oxygen at discharge due to aspiration risk) (Exhibit A, pp. 14–16, 35–39; Testimony).
 5. On November 3, 2025, MDHHS issued a denial letter stating Petitioner did not meet Medical Criteria I and III or II and III of Section 2.3 of the PDN chapter and advising that Petitioner could reapply if status changed (Exhibit A, pp. 12–13; Testimony).
 6. On December 3, 2025, Petitioner timely requested a hearing (Exhibit A, pp. 6, 9; 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 denial of additional 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 the Habilitation Supports Waiver (the Community Mental Health Services Program) and over 21 years of age, that program authorizes the PDN services.

For a Medicaid beneficiary who is not receiving services from the Habilitation Supports Waiver (the Community Mental Health Services Program), the MDHHS Program Review Division P(RD) reviews the request for authorization and authorizes the services if the medical criteria and general eligibility requirements are met.

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.

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).

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. PDN is intended as a transitional benefit to support and teach family members to function as independently as possible. Authorized hours will be modified as the beneficiary's condition and living situation stabilizes or changes. A decrease in hours will occur, for example, after a child has been weaned from a ventilator or after a long term tracheostomy no longer requires frequent suctioning, etc. 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 units 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 time authorized for the month. The caregiver has the flexibility to use the monthly-authorized units as needed during the month. Substantial alterations to the scheduled allotment of daily PDN hours due to family choice (i.e., vacations) unrelated to medical need or emergent circumstances require advance

notice to the PRD. The remaining balance of authorized hours will not be increased to cover this type of utilization. Authorized time cannot be carried over from one authorization period to another.

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., MDHHS Home Help Program) or other resources for hourly care (e.g., private health insurance, trusts, bequests, private pay).

PDN providers are encouraged to work with families to assist in developing a backup plan for care of their child in the event that a PDN shift is delayed or cancelled, and the parent/guardian is unable to provide care. The parent/guardian is expected to arrange backup caregivers that they will notify, and the parent/guardian remains responsible for contacting these backup caregivers when necessary.

2.3 MEDICAL CRITERIA

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 does not automatically include ventilation through Bi-level Positive Airway Pressure (Bi-PAP) or Continuous Positive Airway Pressure (CPAP). Use of these devices to satisfy this criteria will be evaluated on a case-by-case basis; or
- Oral or tracheostomy suctioning 8 or more times in a 24-hour period; or
- Nasogastric tube feedings or medications when removal and insertion of the nasogastric tube is required, associated with complex medical problems or medical fragility; or
- Total parenteral nutrition delivered via a central line, associated with complex medical problems or medical fragility; or

-
-
- Continuous oxygen administration, in combination with a pulse oximeter and a documented need for observations and adjustments in the rate of oxygen administration.

Medical Criteria II

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

- “Frequent” means at least 12 episodes of medical instability related to the progressively debilitating physical disorder within the past six months, or at least six episodes of medical instability related to the progressively debilitating physical disorder within the past three months;
- “Medical instability” means emergency medical treatment in a hospital emergency room or inpatient hospitalization related to the underlying progressively debilitating physical disorder;
- “Emergency medical treatment” means covered inpatient and outpatient services that are furnished by a provider who is qualified to furnish such services and which are needed to evaluate or stabilize an emergency medical condition. “Emergency medical condition” means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to place the health of the individual in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.
- “Progressively debilitating physical disorder” means an illness, diagnosis, or syndrome that results in increasing loss of function due to a physical disease process, and that has progressed to the point that continuous skilled nursing care (as defined in III below) is required; and
- “Substantiated” means documented in the clinical/medical record, including the nursing notes.

For beneficiaries described in II, the requirement for frequent episodes of medical instability is applicable only to the initial determination of medical necessity for PDN. Determination of continuing eligibility for PDN for beneficiaries defined in II is based on the original need for skilled nursing assessments, judgments, or interventions as described in III below.

Medical Criteria III

The beneficiary requires continuous skilled nursing care on a daily basis during the time when a licensed nurse is paid to provide services.

- “Continuous” means at least once every three hours throughout a 24-hour period, and/or when delayed interventions may result in further deterioration of health status, in loss of function or death, in acceleration of the chronic condition, or in a preventable acute episode.
- Equipment needs alone do not create the need for skilled nursing services.
- “Skilled nursing” means assessments, judgments, interventions, and evaluations of interventions requiring the education, training, and experience of a licensed nurse. Skilled nursing care includes, but is not limited to, performing assessments to determine the basis for acting or a need for action; monitoring fluid and electrolyte balance; suctioning of the airway; injections; indwelling central venous catheter care; managing mechanical ventilation; oxygen administration and evaluation; and tracheostomy care.

*Medicaid Provider Manual
Private Duty Nursing Chapter
October 1, 2025, pp 1, 7, 12-13, 16*

The Medicaid PDN benefit is narrowly tailored and requires meeting criteria I and III or II and III. Petitioner is under 21, so the substantive inquiry is whether the medical criteria are satisfied based on current documentation.

1. **Medical Criterion I (daily technology dependence):** The record establishes intermittent/overnight respiratory support needs, with pulmonology directing BiPAP on hold due to neurostorming intolerance and permitting 1 L nasal cannula oxygen overnight as needed to maintain saturations >92% (Exhibit A, p. 26). ENT found no anatomic reason for positive-pressure dependence, and tracheostomy remained a future consideration rather than a performed intervention (Exhibit A, pp. 28–31). Medical Criterion I requires daily reliance on specified technology (e.g., mechanical ventilation ≥ 4 hours/day, suction ≥ 8 times/24h, continuous oxygen with pulse oximetry and need for observations and adjustments in rate) (Exhibit A, p. 65). The documentation reflects PRN oxygen overnight rather than continuous oxygen with ongoing titration; BiPAP was not being used nightly due to intolerance; and there is no quantified evidence of suctioning meeting the ≥ 8 /day threshold. On these facts, Petitioner does not meet Medical Criterion I at the time of the denial.

-
-
2. **Medical Criterion III (continuous skilled nursing):** “Continuous” means interventions at least every three hours throughout 24 hours, and/or where delayed interventions could cause serious deterioration, loss of function, death, or accelerate the chronic condition (Exhibit A, p. 66). While Petitioner requires frequent caregiver involvement and PRN medications for PSH, the PDN standard focuses on licensed nurse assessments, judgments, interventions, and evaluations occurring at the specified frequency and necessity. The hospital and rehab notes discuss care coordination, home equipment (suction, PRN oxygen), and therapy plans but do not quantify a daily home need for licensed nursing interventions every ≤ 3 hours across 24 hours, nor the policy-specific continuous oxygen titration or mechanical ventilation management that typically compels PDN (Exhibit A, pp. 14–16, 35–39).

 3. **Medical Criterion II (frequent medical instability) + Medical Criterion III:** Criterion II applies to initial determinations where there have been at least twelve ER/hospital episodes in six months or six in three months due to a progressively debilitating physical disorder, and continuing eligibility hinges on the original need for Criterion III skilled nursing (Exhibit A, p. 65). Petitioner’s course shows a prolonged initial hospitalization and some rapid response/sepsis workups, but the record provided does not enumerate the required number of distinct emergency treatments/hospitalizations post-discharge in the three-to-six-month window, nor does it establish Criterion III’s continuous skilled nursing cadence in the home (Exhibit A, pp. 21–26, 35–39).

Medicaid policy provides that a beneficiary under 21 qualifies for PDN only if they meet Medical Criteria I and III or II and III. Medical Criterion I requires daily dependence on life-sustaining technology (e.g., mechanical ventilation ≥ 4 hours/day, suctioning ≥ 8 times/day, certain NG replacement scenarios with medical fragility, TPN via central line, or continuous oxygen administration with pulse oximeter and documented need for observations and adjustments in the rate of oxygen administration). Medical Criterion II addresses frequent episodes of medical instability requiring emergency treatment or hospitalization within 3–6 months. Medical Criterion III requires continuous skilled nursing care (assessments/judgments /interventions at least every three hours throughout 24 hours and/or where delayed interventions risk serious deterioration) (Exhibit A, pp. 64–66; Testimony).

As indicated above, the record does not show Petitioner was on mechanical ventilation ≥ 4 hours per day at home, required oral/tracheostomy suctioning ≥ 8 times per 24 hours, or was on continuous oxygen administration with pulse oximetry and documented ongoing adjustments of oxygen rate by a licensed nurse—rather, oxygen was ordered PRN overnight and BiPAP was on hold due to intolerance, with monitoring (Exhibit A, pp. 26–27; Testimony).

While Petitioner’s medical course included serious acute hospitalization in July through September 2025, the PDN denial review focused on whether the initial request satisfied the current Medical Criteria in Section 2.3 of the MPM.

The Department determined Petitioner did not meet Criteria I and III at the time of review (Exhibit A, pp. 12–13; Testimony).

In sum, while Petitioner’s needs are significant and sympathetic, the PDN policy requires precise, contemporaneous proof that the child currently meets the specific thresholds of daily technology dependence and/or continuous skilled nursing interventions as defined. The Department’s denial rests on the absence of such proof in the submission, and the PDN chapter itself contemplates PDN as a transitional benefit with strict criteria to avoid supplanting caregiver responsibilities (Exhibit A, p. 61).

The denial letter’s invitation to reapply if status changes is consistent with policy: if Petitioner subsequently requires, for example, ongoing mechanical ventilation, quantified suctioning ≥ 8 times/day, or continuous oxygen with documented titration needs, or if licensed nursing interventions truly occur at least every three hours around the clock at home, updated documentation could satisfy Section 2.3 (Exhibit A, pp. 12–13, 64–66).

At the hearing, Petitioner was provided with additional phone numbers to seek assistance and the Department’s representatives strongly urged him to contact those numbers as it appears Petitioner would be eligible for assistance, just not PDN.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

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



ROBERT J. MEADE
ADMINISTRATIVE LAW JUDGE

APPEAL RIGHTS: Petitioner may appeal this Hearing Decision to the circuit court. Rules for appeals to the circuit court can be found in the Michigan Court Rules (MCR), including MCR 7.101 to MCR 7.123, available at the Michigan Courts website at courts.michigan.gov. The Michigan Office of Administrative Hearings and Rules (MOAHR) cannot provide legal advice, but assistance may be available through the State Bar of Michigan at <https://irs.michbar.org> or Michigan Legal Help at <https://michiganlegalhelp.org>. A copy of the circuit court appeal should be sent to MOAHR. A circuit court appeal may result in a reversal of the Hearing Decision.

Either party who disagrees with this Hearing Decision may also send a written request for a rehearing and/or reconsideration to MOAHR within 30 days of the mailing date of this Hearing Decision. The request should include Petitioner's name, the docket number from page 1 of this Hearing Decision, an explanation of the specific reasons for the request, and any documents supporting the request. The request should be sent to MOAHR

- by email to LARA-MOAHR-DCH@michigan.gov, **OR**
- by fax at (517) 763-0155, **OR**
- by mail addressed to
Michigan Office of Administrative Hearings and Rules
Rehearing/Reconsideration Request
P.O. Box 30639
Lansing Michigan 48909-8139

Documents sent via email are not secure and can be faxed or mailed to avoid any potential risks. Requests MOAHR receives more than 30 days from the mailing date of this Hearing Decision may be considered untimely and dismissed.

