



**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

██████  
c/o ██████  
██████████  
██████████

DECISION

MPA/152152

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 16, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General (OIG) in regard to Medical Assistance, a telephonic hearing was held on November 06, 2013, at Milwaukee, Wisconsin.

The petitioner’s mother, ██████ ██████ represented 17 year old ██████ at that hearing. During that hearing, petitioner’s representative requested that the record be held open for documents to be submitted to the Division of Hearings and Appeals, and then for those documents to be sent to the Office of the Inspector General (OIG) for a reconsideration decision with an opportunity for a reply by Ms. ██████.

This Administrative Law Judge (ALJ) sent a February 4, 2014 cover letter to Ms. Bailey at OIG with a copy of the following documents: a) an August 22, 2013 letter by Dr. ██████ ██████, MD, Associate Professor of Pediatrics; b) a September 16, 2013 letter by Dr. ██████ T. ██████, MD; and c) an 8 page October 16, 2013 clinical summary by Dr. ██████ ██████ and other specialists including additional clinical information about ██████. Ms. ██████ decided not to send any additional documents to DHA after the November 6, 2013 hearing to respond to Ms. Bailey’s October 16, 2013 eight page summary denial.

In that same letter, this ALJ requested that Ms. Baily review the enclosed copies of letters/documents, and submit a reconsideration summary to me at the Division of Hearings and Appeals (DHA) by February 20, 2014 with a copy of that reconsideration summary letter to be also sent to the petitioner’s mother as his representative. The petitioner’s representative requested and was granted until March 6, 2014 to respond to Ms. Bailey’s reconsideration summary.

Ms. Bailey timely submitted her reconsideration summary to DHA and petitioner’s representative. In that reconsideration, OIG continued to assert that the petitioner failed to establish that he has medical instability requiring the skilled intervention of a nurse for eight or more hours per day of skilled nursing care, and private duty nursing is not the most appropriate level of service to meet petitioner’s medical needs. Ms. ██████ did not submit any response to the reconsideration to DHA by March 6, 2014 or even by the date of this decision.

The issue for determination is whether the Office of the Inspector General (OIG) correctly denied the petitioner’s prior authorization request for Private Duty Nursing (PDN) because petitioner did not establish that he required 8 or more hours per day of skilled nursing care.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████  
c/o ██████  
████████████████████  
████████████████████

Representative:

██████, mother  
████████████████████  
████████████████████

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Sharon Bailey, RN consultant  
Office of the Inspector General  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a 17 year old resident of Milwaukee County who is certified for MA. ██████ lives with his parents and attends school daily when he is well enough to attend.
2. The petitioner has a complex medical history including: premature birth, non-accidental trauma, cerebral palsy, seizures and sleep apnea. He has a g-tube through which feedings and medications are provided (he does not take anything orally). He also has a baclofen pump to assist in managing his spasticity.
3. The petitioner receives occupational and physical therapies at school.
4. The Home Health Certification and Plan of Care (Attachment 2) includes orders for vital signs each shift as needed (PRN), oxygen as needed (PRN), chest physiotherapy twice daily, bi-pap, suctioning PRN, and head to toe assessment each shift. This schedule is conducted from midday to evening hours.
5. ██████ has not had any reoccurrence of pneumonia since the fall of 2012, and has well controlled diabetes. He is documented as having brief seizures daily, but no interventions are documented. He does not have any PRN medication for seizure intervention. He is basically stable with the use of his bi-pap machine for sleep apnea.
6. On or about June 17, 2013, petitioner’s provider, Universal Pediatric Services, Inc., submitted a prior authorization requesting private duty nursing (PDN) services of 60 hours per week for the petitioner for one year beginning June 25, 2013, at a cost of \$141,648.00.
7. The Office to the Inspector General (OIG) issued an August 7, 2013 written notice of denial to the petitioner indicating that petitioner did not establish that he needed 8 or more hours per day of skilled nursing care, and thus did not meet the required criteria for approval per DHS 107.12(1)(a), Wis. Adm. Code.

8. There are four home health service care levels paid for by Wisconsin MA: Private Duty Nursing (PDN), Intermittent Skilled Nursing Visits (SNV), Home Health Aide (HHA), and Personal Care Worker (PCW). The most intense of these, PDN, is for medical conditions requiring continuous skilled care, and is for “a recipient who requires 8 or more hours of skilled nursing care.”
9. In its summary letter of October 16, 2013, OIG Nurse consultant, Sharon Bailey, established why PDN services are not required for petitioner and other levels of cares are appropriate to meet his medical needs: a) Gastrostomy Tube feedings – G tube feedings are not a task that typically requires the skills of a nurse unless there are instabilities that would require a skilled intervention; b) Suctioning – oral suctioning can generally be performed by a Home Health Aide (HHA), as can nasal suctioning. However, suctioning of a tracheostomy tube or deep nasopharyngeal requires skilled nursing level of care; c) Oxygen/oxygen saturation – oxygen may be used continuously or as needed, and oxygen saturation measures the amount of oxygen circulating in the blood. These tasks can generally be completed by a Personal Care Worker (PCW), a HHA or a nurse unless there are complications or unstable and low oxygen saturation; d) Medications – administration of medication may be completed by a PCW, HHA or nurse depending on the route and whether the medication and dosage are “pre-selected” by a nurse or competent family member unless there are certain circumstances, such as G-tube administration of medications which is generally a skilled nursing task; e) CPT Vest – application of the CPT vest is not considered a skilled nursing task; f) Bi-Pap machine for sleep apnea – is not a skilled nursing task; and is delegated to a PCW or HHA for assistance with donning/doffing face mask and other basic maintenance of Bi-Pap machine. g) Seizures – seizure precaution are generally HHA or PCW duties unless emergency intervention is needed by a skilled nurse such as administration of oxygen or an ambu bag, or administration of valium or other muscle relaxants. If such nursing interventions are not medically necessary, HHA or PCW level of cares are appropriate.
10. The petitioner submitted additional medical evidence during the hearing which was sent to OIG for a reconsideration summary. See above Preliminary Recitals.
11. OIG nurse consultant Bailey timely submitted her reconsideration summary to DHA and petitioner’s representative. In that reconsideration, OIG continued to assert that petitioner failed to establish that he has medical instability requiring the skilled intervention of a nurse for eight or more hours per day of skilled nursing care, and private duty nursing is not the most appropriate level of service to meet petitioner’s medical needs for the following reasons: a) petitioner’s care does not require at least 8 hours per day of skilled nursing interventions by a Private Duty Nursing (PDN) per DHS 107.12(1)(a); b) many of petitioner’s care needs could be performed by a Home Health Aide (HHA) or Personal Care Worker (PCW); c) the documentation submitted by petitioner while the record was held open does not establish the petitioner has medical instability requiring the skilled intervention of a nurse. Instead, intermittent skilled nursing could be provided if tasks could not be safely delegated to an HHA or PCW. See above Preliminary Recitals.
12. The petitioner’s representative did not submit any response to the reconsideration to DHA by March 6, 2014 or even by the date of this decision. See above Preliminary Recitals.

### **DISCUSSION**

The Office of the Inspector General (OIG) only reimburses providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat. §§49.46(2) and 49.47(6)(a), as implemented by Wisconsin Administrative Code, Chapter DHS 107. Some services and equipment are covered only if a prior authorization request is submitted and approved by the OIG in advance of receiving the service. PCC requires prior authorization.

Private Duty Nursing (PDN) services are medical services provided to an MA recipient who requires at least eight hours per day of skilled nursing care, as defined in the Wisconsin Administrative Code, §DHS 107.12. §DHS 107.12(1)(a) provides: “Only a recipient who requires 8 or more hours of skilled nursing care and is authorized to receive these services in the home setting . . . .”

The OIG determined that the requested PDN services in this case are not covered by the MA program per Wis. Admin. Code §DHS 107.02(3)(e). OIG concluded that the clinical documentation submitted by the provider did not prove that the petitioner required at least 8 hours per day of skilled nursing services, which is the care threshold for the approval of such private duty nursing services. *See*, Wis. Admin. Code §DHS 107.12, 107.11(2)(a).

OIG does not dispute that the petitioner has a complex medical history, and requires assistance to complete tasks including use of a Bi-Pap machine and respiratory treatments. The petitioner does have significant care needs. However, many of those tasks can be handled by a person less skilled than a nurse – use of the CPAP machine, weigh-in, monitoring of g-tube feeding, and supervision/monitoring for potential problems. At hearing, the petitioner’s mother did establish that her son has serious medical needs that require care. While petitioner does have some intermittent skilled nursing needs, the documentation does not show that the skilled interventions equal at least 8 hours per day. Intermittent skilled care could be provided by a nurse by means of intermittent skilled nursing visits, if the task can not be safely provided by a Home Health Aide or Personal Care worker or arranged with the primary caregivers’ schedule. Accordingly, based upon the above, I conclude that OIG correctly denied the petitioner’s prior authorization for Private Duty Nursing (PDN) because the petitioner did not establish that he required 8 or more hours per day of skilled nursing care as required by DHS 107.12(1)(a), Wis. Adm. Code.

### **CONCLUSIONS OF LAW**

The Office of the Inspector General (OIG) correctly denied the petitioner’s prior authorization for Private Duty Nursing (PDN) because the petitioner did not establish that he required 8 or more hours per day of skilled nursing care as required by DHS 107.12(1)(a), Wis. Adm. Code.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby Dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 7th day of April, 2014

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\sGary M. Wolkstein  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on April 7, 2014.

Division of Health Care Access and Accountability