

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

C. M., v. DEPARTMENT OF COMMUNITY HEALTH,	Petitioner, Respondent.	: : : : : : : : : : :	Docket No.: OSAH-[REDACTED]-Howells Agency Reference No.: [REDACTED]
--	--	---	--

INITIAL DECISION

I. Summary of Proceedings

The hearing in this matter was held on July 15, 2013, before the undersigned administrative law judge of the Office of State Administrative Hearings. The hearing's purpose was to determine whether the skilled nursing hours provided to the Petitioner under the Georgia Pediatric Program ("GAPP") program should be reduced. The Petitioner was represented by his mother, [REDACTED], who appeared by telephone. The Department of Community Health ("Department") was represented by Deborah Lonon, Esq. After careful consideration of the evidence and the arguments of the parties, the Department's decision to reduce the Petitioner's skilled nursing care to thirty-two hours is hereby **AFFIRMED**.

II. Findings of Fact

The Petitioner's Medical Condition

1.

The Petitioner was born on December 27, 1996, and is currently sixteen years old, although his developmental level is that of a six month old. He is diagnosed with mitochondrial disorder consisting of severe developmental delays and severe seizure disorder. The Petitioner is completely dependent: he is non-ambulatory and is unable to articulate, but can communicate

with facial expressions and vocalizations. As he can do nothing on his own, he requires constant supervision. The Petitioner also suffers from a sleep disorder, must be fed via a G-tube, has asthma requiring occasional nebulizer treatments, and wears diapers. (Testimony of Ms. [REDACTED] and Melissa Holloway, RN; Exhibits R-C, R-D, R-E, R-G, P-1.)

2.

The Petitioner experiences fifteen to twenty seizures per day. The seizures last from two seconds to ten minutes. He is on various seizure medications, some of which were new as of February 2013 and required educating his caregivers on the new medications and closely monitoring the weaning of others to “prevent an increase in uncontrolled seizure activity.” One medication, Diastat, is administered rectally in the event a seizure lasts more than ten minutes. If he experiences an extremely severe seizure, any caregiver, including a professional nurse, would need to call an ambulance. The Petitioner’s seizures put him at risk for injury and hypoxia. A seizure may also result in aspiration because it causes him to drool excessively and stop breathing. Once he begins to breathe again, he sucks the saliva into his lungs, causing aspiration that can lead to pneumonia. It may take forty-eight hours to hear the fluid in his lungs. It is not always clear when he has aspirated, and a nurse will closely monitor the sound of his lungs for fluid. His mother cannot always detect the sound of fluid in his lungs. (Testimony of Ms. [REDACTED] and Ms. Holloway; Exhibits R-D, R-E, P-1.)

The Petitioner’s Caregivers and Care Schedule

3.

The Petitioner’s mother, his primary caregiver, works in the home as the business manager for her husband’s home-based advertising business. She has some flexibility in her work hours, but because many clients live on the west coast of the United States, she often has to

work in the evenings to meet their needs. The Petitioner's father travels frequently as part of his business and cannot consistently provide care. The Petitioner's twenty-one year old sister lives at home while attending college and provides supplementary care when she is at home. The GAPP nursing hours permit the Petitioner's mother to work in the summer and in the evenings during the school year. (Testimony of Ms. [REDACTED].)

4.

During the school year, the Petitioner attends school five days a week for eight hours per day in a special education classroom with a small number of other children.¹ At school, a nurse administers his medications and performs nursing assessments multiple times per day. He is attended in his classroom by a paraprofessional who uses a walkie-talkie and can quickly contact the school nurse if the Petitioner has a seizure. Other school-based services include speech therapy, physical therapy, and occupational therapy. The speech therapy is to strengthen his oral muscles to prevent drooling and aspiration—it has not been successful. The physical therapy is to help strengthen his core so that he can sit up more easily and will not hurt himself if he falls. The occupational therapy is to help develop his fine motor abilities so that he can communicate. (Testimony of Ms. [REDACTED]; Exhibit P-1.)

5.

The Petitioner applied for GAPP services in December 2010. During the wait for approval in January 2011, he was hospitalized in the intensive care unit for eight days. He was finally approved for GAPP services in May 2011. Prior to the present review, the Petitioner received forty hours of skilled nursing services per week through GAPP. When he was receiving forty hours, his nurses generally began at 4:30 and stayed until 10:30 p.m. on weekday evenings, for a total of six hours a day. He also received ten hours on Saturdays. He did not receive care

¹ The Petitioner is currently on summer break until August 8, 2013.

on Sundays. Since the Final Determination letter of April 2, 2013, he has been receiving thirty-two hours of GAPP care per week. His present nursing care hours are from approximately 4:30 to 9:00 p.m. and ten hours on Saturdays, for a total of thirty-two hours. (Testimony of Ms. [REDACTED]; Exhibit R-B.)

GAPP Program Background

6.

Georgia, acting through the Department, implemented GAPP in 2002 under a 1915(c) Home and Community-Based Medicaid Waiver with the purpose to permitting children who would otherwise be institutionalized to remain in the community. In furtherance of this goal, the program serves children under age twenty-one who are “medically fragile with multiple systems diagnoses and require continuous skilled nursing care in shifts.” To be eligible, members must meet the level of care for admission to a hospital or nursing facility. Services are “based on medical necessity, taking into consideration the overall medical condition of the member, the equipment and the level and frequency of care for the member.” The number of hours is approved with regard to how much training the caregiver still needs and the specific medical needs of the child. (Testimony of Sharon Collins, R.N., GAPP Specialist; ² Part II Policies and Procedures for the Georgia Pediatric Program (“GAPP Manual”) [Exhibit R-A] §§ 601, 702.1.)

7.

As suggested above, the GAPP program has a teaching component, and “one of the goals of the [GAPP] program is to teach the parents and caregivers how to safely care for the member in the absence of a nurse.” Thus, the number of hours granted for any particular child is based

² Sharon Collins, a Nurse Practitioner, has a B.S. in Nursing, a Masters in Neonatal Perinatal Nursing and a Ph.D. in Education. She has worked as a neonatal intensive care nurse and as a nurse practitioner and clinical specialist in neonatal intensive care and high-risk obstetrics. She is responsible for updating the GAPP Manual and ensuring compliance with state and federal law. She sits in on GMCF review meetings to monitor decisions but does not participate in the decision making. (Testimony of Ms. Collins.)

partially on “the documented training needs of the primary caregiver confirmed by an established individualized teaching plan.” The teaching plan is created by the provider agency in conjunction with the parent and a physician and is tailored to meet the needs of the parent and child. Furthermore, the program requires the primary caregiver to assist with care and anticipates that the caregiver will “become competent to assume some responsibility for the care of the child.” Prior to approval for program participation, the primary caregiver must acknowledge that caregiver training is required in order to be admitted into GAPP. (Testimony of Ms. Collins; GAPP Manual §§702.1, 803.A, 905.8, App. J.)

8.

The Georgia Medical Care Foundation (“GMCF”) contracts with the Department to assess GAPP applicants and participants for program admission, as well as approving the specific number of skilled nursing hours. Because the GAPP Manual provides that skilled nursing services can only be approved for three to six months at a time, GMCF also conducts reviews to determine quantity of services, appropriateness of services, and approves or denies continued stay in the GAPP program. The review process involves looking at nursing notes for the previous three months. If needed, GMCF may also request additional documentation from the child’s primary care physician. (Testimony of Ms. Collins; GAPP Manual §§ 601, 601.2, 702.1, 801, 801.2, 802, 803.A.)

GAPP Initial Review

9.

On February 16, 2013, GMCF’s medical review team met to review the Petitioner’s need for continued skilled nursing services. The team consisted of two nurses, Melissa Holloway, R.N., and Karen Mourneau, R.N., and a physician, Dr. Michael Papciak. As a general rule, the

review team on any particular case has two nurses and a physician, although the particular persons reviewing any one case can differ. The GMCF team reviewed nursing notes only through early February. The team did not consider incidents or interventions that were not included in the nursing notes, such as some of the Petitioner's seizure activity. Based on the documents reviewed, the team decided to gradually reduce the Petitioner's skilled nursing hours to twenty-four hours per week. (Testimony of Melissa Holloway; Exhibits R-G, P-3.)

10.

Shortly thereafter, on February 22, 2013, the Department sent the Petitioner an Initial Notification letter that his skilled nursing hours would be reduced from forty hours per week to thirty-two hours per week for four weeks, followed by a final reduction to twenty-four hours per week for five weeks, until May 31, 2013. The Department's stated reasons for the reduction were as follows:

The nurse's notes reviewed for the past 3 months document the stability of your child's condition.

- Oxygen saturations are documented to be >96% while on room air.
- No need for oxygen reported.
- Although seizures have continued intermittently, they have been brief, less than three minutes, without respiratory compromise or the need for skilled nursing intervention.

Your child's condition has remained stable with no exacerbations in disease process or hospitalizations since last pre-certification period.

There is no evidence from the documentation submitted that the current hours are medically necessary to correct or ameliorate the child's medical condition (see 42 USCS § 1382h)(b), O.C.G.A. § 49-4-169.1) and GAPP Manual § 702.2(A)).

Other reason(s):

- G-tubes are not so inherently complex to require a professional licensed person on a daily basis. This does not

require GAPP nursing hours[,] which require continuous skilled nursing care or skilled nursing care in shifts (GAPP Manual § 601) and it does not meet medical necessity and require the level of care provided in a nursing facility or hospital[.]

- [The Petitioner] requires pulse oximetry and g-tube medications; all of which are not so inherently complex to require a professional licensed person on a daily basis.
- Skilled nursing is granted, based on medical necessity of child's condition.
- Skilled nursing hours cannot be granted for projected potential problems. It is to provide for the current skilled need of the child.
- [The Petitioner] is able to attend school 5 days per week, 8 hours per day without a nurse in attendance.
- This is a gradual wean from 40 hr/wk (5.71 hr/day) to 32 hr/wk (4.57 hr/day) to 24 hr/wk (3.43 hr/day).

(Exhibit P-3 (emphasis omitted) (citation forms in original).) The medical review team based its decision to reduce the Petitioner's hours in part on the fact that, in its estimation, the only skilled nursing service provided to the Petitioner is a daily nursing assessment that takes a maximum of one hour to complete. Ms. Holloway did testify that G-tubes and the like might be considered a skilled need during the training phrase (i.e., while the caregiver is learning the skill) but would not be considered a skilled need by the Department after that point. She also testified that the administration of seizure medication is not a skilled service. The initial letter notified the Petitioner's caregivers of the right to request reconsideration in writing, so long as they submit "supplementary medical information," following which a final decision on the number would be made. (Testimony of Ms. Holloway; Exhibit P-3.)

GAPP Reconsideration Review

11.

On March 19, 2013, the Petitioner's mother requested reconsideration in a letter relaying additional information and addressing her concerns. Specifically, she noted that the nursing notes were not comprehensive and that her son had developed pneumonia as a result of aspirating during a seizure on February 12, 2013. She also clarified that his seizures may last "longer than three minutes with respiratory compromise and the need for skilled intervention." Accompanying her request were additional nursing notes for dates past early February and a letter from the Petitioner's primary care physician, Douglas L. Williams, MD, in support of a decision to maintain the Petitioner's GAPP skilled nursing care at forty hours per week.³ Dr. William's letter emphatically maintained that forty hours of care are necessary "for this extremely medically fragile child as to prevent complications developing thereby ameliorating the need for hospitalizations and the worsening of his condition." The Petitioner's frequent seizures were cited as an important consideration, especially as his seizures "can always involve respiratory compromises at any time with the possibility of aspiration and continued usage of [D]iastat to control persistent seizures," which have, in the past, led to hospitalization for "status epilepticus complications." (Testimony of Ms. Holloway; Exhibits P-1, P-2.)

12.

A GMCF medical review team reconvened to reconsider the initial decision. This review team was comprised of the same two nurses who participated in the initial review but included a different physician, Dr. Schuessler. On reconsideration, the team determined that the Petitioner's hours should be reduced to thirty-two, instead of the more drastic reduction to twenty-four. The

³ The Petitioner's mother was not aware that she should submit her own seizure log as well to reflect the seizures that occurred when the nurse was not present. (Testimony of Ms. Morgan.)

team took into account (1) additional nursing notes, (2) Dr. William's letter, (3) and a review recertification packet submitted by the Petitioner's private duty nursing agency. In Dr. Schuessler's judgment, the frequency of the Petitioner's seizures, which occur multiple times a day, justifies thirty-two hours of GAPP skilled nursing care.⁴ The team did consider the Petitioner's drop in oxygen levels during the several weeks following his aspiration and pneumonia, as well the fact of their occurrence; although, the team members did not believe they justified a continuation of care at forty hours per week. (Testimony of Ms. Holloway.)

13.

A letter conveying the Final Decision was sent to the Petitioner, notifying him that he would receive thirty-two hours of care, a reduction from forty hours, until May 31, 2013. The Final Determination Letter reiterated most of the reasoning given in the Initial Notification Letter. In addition to the reasons cited in the initial letter, the Final Determination cited the fact that Petitioner's bout with pneumonia in February no longer required skilled care and the fact that a nurse cannot prevent the duration or intensity of his seizures. The Final Determination Letter omitted the incorrect finding that the Petitioner's seizures are limited in duration to two to three minutes. However, it did continue to state that the Petitioner's oxygen saturation levels were above 96% on room air, an inaccurate conclusion based upon a Bayada Homecare "flow sheet" that only recorded information from January 2013. As mentioned, his oxygen levels dropped in February 2013 after an incident in which he aspirated and contracted pneumonia.⁵ While his oxygen saturation levels only need to be above 92% based upon his physician's plan of

⁴ Dr. Schuessler did not testify at the hearing. Rather, Ms. Holloway testified about Dr. Schuessler's opinion and the reasoning therefore.

⁵ Petitioner's oxygen saturation levels were 90% on February 13, 2013; 94% on February 18, 2013; 88% on February 21, 2013; and 95% on February 23, 2013. (Exhibit R-G.) Immediately following the diagnosis of pneumonia, the agency did not have nurses available to care for Petitioner. Thus, the nursing notes do not reflect the Petitioner's oxygen saturation levels for those dates. (Testimony of Ms. Morgan.)

care, the incorrect conclusion was kept because the team is told to keep the rationales between the two letters consistent. (Testimony of Ms. Howells; Exhibits R-B, R-D, P-3.)

14.

While awaiting the results of the present appeal, the Petitioner's mother chose to receive the recommended thirty-two hours of skilled nursing care because she was concerned that if she lost on appeal she would have to repay the nursing agency for the additional hours of care not covered by GAPP. Her concern was based upon the language of the Final Determination Letter: "If the Administrative Law Judge rules in favor of the Department, the Department may seek reimbursement for services rendered during the appeal period." (Testimony of Ms. [REDACTED]; Exhibit R-B.)

III. Conclusions of Law

1.

This matter concerns the Department's reduction of the Petitioner's benefits; therefore, the Department bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07. The standard of proof is a preponderance of evidence. Ga. Comp. R. & Regs. 616-1-2-.21.

Medicaid Background

2.

Medicaid is a joint federal-state program that provides comprehensive medical care for certain classes of eligible recipients whose income and resources are determined to be insufficient to meet the costs of necessary medical care and services. 42 U.S.C. §§ 1396-1396v. Each state is required to designate a single state agency to administer its Medicaid plan. In Georgia, that agency is the Department. O.C.G.A. § 49-2-11(f); 42 C.F.R. § 431.10(a).

3.

The Medicaid Act requires states to provide necessary medical care to eligible recipients under age twenty-one “whether or not such services are covered under the State plan.” 42 U.S.C. § 1396d(r)(5). More specifically, a participating state must provide early and periodic screening, diagnostic, and treatment (“EPSDT”) services to eligible children as needed “to correct or ameliorate defects and physical and mental illnesses.” *Id.* The Department cannot choose to disregard federal EPSDT requirements. 42 U.S.C. § 1396c (state Medicaid plans must comply with federal statute or no payments will be made); O.C.G.A. § 49-4-18 (compliance with federal Social Security Act is intended); *Moore v. Reese*, 637 F.3d 1220, 1233-1234 (11th Cir. Ga. 2011) (outlining a state’s “mandatory EPSDT obligations to Medicaid-eligible children”).

4.

Federal statutes and regulations do not define the terms “correct or ameliorate”; however, Georgia has defined the phrase by statute to mean “to improve or maintain a child’s health in the best condition possible, compensate for a health problem, prevent it from worsening, prevent the development of additional health problems, or improve or maintain a child’s overall health, even if treatment or services will not cure the recipient’s overall health.” O.C.G.A. § 49-4-169.1(1) (emphasis added); see *A.M.T. v. Gargano*, 781 F. Supp. 2d 798, 805 (S.D. Ind. 2011).⁶ Under applicable federal regulations, when private duty nursing services are determined to be medically necessary for a Medicaid-eligible child, the Department must provide nursing care to the child “that is ‘sufficient in amount, duration, and scope to reasonably achieve its purpose,’ but ‘may

⁶ Courts in other states that have interpreted the phrase “correct or ameliorate” have found it to mean “to make better or more tolerable.” *A.M.T.*, 781 F. Supp. 2d at 805 (citing *Collins v. Hamilton*, 231 F. Supp. 2d 840, 849 (S.D. Ind. 2002)). In so finding, the court in *A.M.T.* considered legislative history showing that Congress intended for EPSDT to function as “a preventative health program for children.” *Id.* at 806 (citing H.R. 3299, 101st Cong. § 4213 (1989)). It held that failing to consider “a disabled child’s potential for regression violates federal Medicaid law,” finding it unreasonable to put a Medicaid recipient on a “figurative rollercoaster” by requiring that the child regress before continuing Medicaid services. *Id.* at 807.

place appropriate limits on a service based on such criteria as medical necessity.” Moore, 637 F.3d at 1234 (quoting 42 C.F.R. §§ 440.230(b) and (d)). In determining what amount of skilled nursing hours is medically necessary, both the treating physician and the Department may introduce evidence of medical need. Id. The particular number of hours that is medically necessary is then ultimately determined by the factfinder, here the Court. Id. at 1250; Hunter v. Cook, No. 1:08-CV-2930-TWT, 2011 U.S. Dist. LEXIS 109775, at *8 (N.D. Ga. Sept. 27, 2011). Thus, the statement in the GMCF determination letters that “skilled nursing hours cannot be granted for projected potential problems” is not entirely accurate. (See Exhibits P-3, R-B.)

5.

Private duty nursing, the service at issue in this case, is one type of EPSDT service that must be made available to eligible children. 42 U.S.C. § 1396d(a). Private duty nursing is defined as “nursing services for recipients who require more individual and continuous care than is available for a visiting nurse or routinely provided by the nursing staff of the hospital or skilled nursing facility.” 42 C.F.R. § 440.80. These nursing services are provided by a registered nurse or nurse practitioner under the direction of the recipient’s physician at the recipient’s home, a hospital, or a skilled nursing facility. Id. GAPP uses the nomenclature “in-home skilled nursing services” to describe private duty nursing services. GAPP Manual § 601.3; see also Moore, 637 F.3d at 1224; Royal v. Cook, No. 1:08-CV-2930-TWT, 2012 U.S. Dist. LEXIS 84537, at *2 (N.D. Ga. June 15, 2012).

Requirements for Skilled Nursing Hours

6.

When in-home skilled nursing services are medically necessary for a Medicaid-eligible child, the Department must provide nursing care to the child “that is ‘sufficient in amount,

duration, and scope to reasonably achieve its purpose,' but 'may place appropriate limits on a service based on such criteria as medical necessity.'" Moore, 637 F.3d at 1234 (quoting 42 C.F.R. §§ 440.230(b), (d)). Under the GAPP Manual, medical necessity, "taking into consideration the overall medical condition of the member, the equipment and the level of care and frequency of care required for the member," is used to determine a child's need for "continuous skilled nursing care in shifts." GAPP Manual §§ 601, 702.1. The number of nursing hours is determined by the child's "specific medical treatment needs . . . and the documented training needs of the primary caregiver." Id. Determining the need for skilled nursing care requires a "common-sense, non-technical consideration of the patient's condition as a whole." Aurora v. Sec'y of U.S. Dep't of Health & Human Servs., 715 F. Supp. 466, 468 (E.D.N.Y. 1989).

7.

In determining the number of skilled nursing hours that are medically necessary, both the treating physician and the Department may introduce evidence of medical need. Moore, 637 F.3d at 1235. When the Department and the treating physician do not agree, a factfinder, in this case the undersigned, determines the number of hours that is medically necessary. Id. at 1250; Hunter, 2011 U.S. Dist. LEXIS 109775, at *8.

8.

The GAPP Manual adopts the language and requirements surrounding "skilled services" from federal Medicare regulations. See GAPP Manual, App. R. Under the regulations, skilled nursing services are those which "[r]equire the skills of technical or professional personnel such as registered nurses . . . and [a]re furnished directly by, or under the supervision of, such personnel." 42 C.F.R. § 409.31(a), (b)(1). In general, the "inherent complexity of the service,

the condition of the beneficiary, and accepted standards of medical and nursing practice” are all factors used to determine whether a particular service is considered skilled. 42 C.F.R. § 409.44(a), (b)(1)(i). “The fact that a skilled nursing service can be or is taught to the beneficiary or to the beneficiary’s family or friends does not negate the skilled aspect of the service when performed by the nurse.” 42 C.F.R. § 409.44(b)(iii). Even a service that is customarily considered unskilled may constitute a skilled service if, for instance, “only a registered nurse can ensure that essential non-skilled care is achieving its purpose.” 42 C.F.R. § 409.42(c)(1)(i). Skilled services specifically include both skilled assessments and caregiver training. 42 C.F.R. §§ 409.33(a)(ii)(2)(1), 409.42(c)(1)(ii).

9.

Because GAPP is, in part, a teaching program, the GAPP Manual contemplates that skilled nursing hours will be reduced when a child’s caregivers have been trained to provide more care. The number of approved hours is based on the “specific medical treatment needs of the member . . . and the documented training needs of the primary caregiver” GAPP Manual § 702.1(D). There is an “expectation that the primary caregiver(s) will become competent to assume some responsibility for the care of the child.” GAPP Manual § 702.1(E). Thus, under ordinary circumstances, a reduction of skilled nursing hours is often appropriate after a caregiver has received proper training.

Thirty-Two Hours of Skilled Nursing Services are Medically Necessary

10.

In the present case, it is undisputed that the Petitioner requires skilled nursing services to ameliorate his medical condition. The Petitioner’s condition has not improved and training will not enable the Petitioner’s caregivers to be able to perform certain needs, such as the nursing

assessment. At the hearing, the Department's attorney argued for a reduction to twenty-four hours of nursing care, using Ms. Holloway's professional opinion as support; however, she did so contrary to the decision of Dr. Schuessler that thirty-two hours are medically necessary given the frequency of the Petitioner's seizures.⁷

11.

The evidence demonstrates that the Petitioner does not need forty hours per week of skilled nursing to correct or ameliorate his condition; however, the medical evidence does support a reduction to thirty-two hours. First, the Petitioner is able to attend school full time because of the stability of his condition. Second, while he needs constant supervision, his mother works from home and is able to observe him. When she works in the evenings and on weekends and cannot, therefore, actively attend to the Petitioner's medical needs, there are generally GAPP nurses present. See Moore, 637 F.3d at 1228, 1241 (when approving skilled nursing hours, GMCF considered caregiver's work schedule and sleeping needs, but not "caregiver convenience" activities, such as grocery shopping or attending social functions). As she and her husband are both income earners, it appears that they can continue to sustain themselves and care for the Petitioner without placing him at risk for institutionalization. Third,

⁷ In addition to the fact the Department's own physician found that a reduction to twenty four hours would be inappropriate, to permit the Department to revert to its initial decision without giving the Petitioner prior notice raises serious due process concerns. See 42 U.S.C. § 1396a(a)(3) (state must "provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied or is not acted upon with reasonable promptness"); Doe v. Bush, 261 F. 3d 1037, 1056-57 (11th Cir. 2001) (citing Catanzano v. Dowling, 847 F. Supp. 1070, 1081 (W.D.N.Y. 1994) ("Under federal regulation, the State Medicaid agency must provide a proper notice to the patient informing him of the proposed change") (emphasis in original and added); 42 C.F.R. 431.206 (notice of adverse action required), 431.210 (content of notice must include "[a] statement of what action the State, skilled nursing facility, or nursing facility intends to take"). The Petitioner was only put on notice of the reduction to thirty-two hours. While the Final Determination Letter made mention of an eventual reduction to twenty-four hours of skilled nursing, it was a typographical error and it was understood by the Petitioner's mother and the Department as such. (Testimony of Ms. Holloway and Ms. Morgan.) Under the GAPP Manual, the parent may only request reconsideration by the GMCF of the initial decision, but he or she may "appeal the Final Determination Letter," which is heard by an administrative law judge. (GAPP Manual §§ 804.2, 805.) The Final Determination Letter reduced the Petitioner's hours to thirty-two and this reduction is what his parents appealed and what is appropriately before this Court.

because the Petitioner has been receiving thirty-two hours of GAPP skilled nursing care during the pendency of this appeal without incident, it appears that the hours he receives now are sufficient to maintain his health. Furthermore, if thirty-two hours were sufficient over the summer when the Petitioner was on vacation from school, it should continue to be sufficient when he is at school for a large portion of the day under the care of a paraprofessional, with a school nurse in the building.

IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Department's decision to reduce the Petitioner's care to thirty-two hours is hereby **AFFIRMED.**⁸

SO ORDERED, this 9th day of August, 2013.

STEPHANIE M. HOWELLS
Administrative Law Judge

⁸ Because the Department's subsequent decision to reduce the hours to twenty-four was not properly before this Court, any such request is **DENIED**.