



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

March 17, 2011

-----for -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 25, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to deny your son's Private Duty Nursing services.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

Medicaid regulations state that Private Duty Nursing is considered supportive to the care provided to an individual by the individual's family, foster parents, and/or delegated caregivers, as applicable. Nursing services shall be based on medical necessity. (Medical Necessity Review and Payment Authorization for Private Duty Nursing, MA-01-21)

Information submitted at your hearing reveals that documentation provided to the Department failed to establish medical necessity for Private Duty Nursing services.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny Private Duty Nursing services.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Amy Workman, BMS

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW**

-----,

Claimant,

v.

Action Number: 11-BOR-352

**West Virginia Department of
Health and Human Resources,**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing for ----- . This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on February 25, 2011 on a timely appeal filed December 30, 2010. It should be noted that all parties participated telephonically.

II. PROGRAM PURPOSE:

The 1965 Amendments to the Social Security Act established, under Title XIX, a Federal-State medical assistance program commonly known as Medicaid. The Department of Health and Human Resources administers the Medicaid Program in West Virginia in accordance with Federal Regulations. The Bureau for Medical Services is responsible for the development of regulations to implement Federal and State requirements for the program. The Department of Health and Human Resources processes claims for reimbursements to providers participating in the program.

III. PARTICIPANTS:

-----, Claimant's father

-----, Social Worker, [REDACTED]

-----, RN, Nurse Coordinator, [REDACTED]

Lillie Clay, Program Manager, Bureau for Medical Services

Jenny Craft, RN, West Virginia Medical Institute

Marcus Canaday, Director of Home and Community-Based Services, Bureau for Medical Services

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct to deny the Claimant's Private Duty Nursing services based on failure to establish medical necessity.

V. APPLICABLE POLICY:

Medical Necessity Review and Payment Authorization for Private Duty Nursing (MA-01-21)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Medical Necessity Review and Payment Authorization for Private Duty Nursing (MA-01-21)
- D-2 Information from [REDACTED] M.D., and [REDACTED] Healthcare Services
- D-3 Notices of Denial Determination dated December 10, 2010

Claimant's Exhibits:

- C-1 Letter from -----, RN, dated February 18, 2011

VII. FINDINGS OF FACT:

- 1) On December 8, 2010, the Department received a request (D-2) for Private Duty Nursing services for the Claimant, -----.

Medical documentation submitted to the Department by [REDACTED] Healthcare Services indicates that the Claimant, then 21 months old, had just been released from [REDACTED] Hospital. The letter, dated December 8, 2010, indicates that the Claimant had been admitted for malabsorption problems as the result of his diagnosis of Short Gut Syndrome. The letter indicates that ----- has had more than 15 bowel surgeries and "receives TPN via Central Line, 20hrs/day, and continuous enternal nutrition via his gastrostomy tube, 24hrs/day. ----- has 30-50 liquid stools per day, and vomits several times a day. This causes many skin problems, esp. to his buttocks area. ----- also requires weekly lab draws from his Central Line, and for them to be delivered to the lab." The letter goes on to state that -----'s father is a restaurant manager, working mostly night shifts, and that -----'s mother is home with him and his two sisters, ages three (3) years and 10 months.

The information also included a letter from [REDACTED] M.D., who stated that ----- was born with gastroschisis and has had extensive resection of the small bowel. He has been

diagnosed with Short Gut Syndrome and receives the “vast majority of his nutrition through intravenous total peripheral nutrition. He also has a gastrostomy tube and receives a small amount of feedings through his g tube. He is at nutritional risk due to malabsorption.”

The request included documentation regarding the Home Health Certification and Plan of Care. Information provided during the hearing indicates that -----’s parents have been trained to provide the child’s in-home care, including changing the dressing to his central line.

- 2) On December 10, 2010, the Department sent Notices of Denial to the Claimant, [REDACTED] and [REDACTED] Healthcare Services which state, in pertinent part:

The request for Private Duty Nursing for 56 hours per week was denied due to not meeting WV Medicaid criteria. The documentation provided did not support that the patient required labor intensive, hourly nursing to meet their [*sic*] needs. Based on the documentation submitted, the family had been taught and demonstrated the skills and abilities to carry out the plan of care. Based on the documentation submitted, the needs would best be served with intermittent skilled nursing services.

- 3) Lilly Clay, Program Manager with the Bureau for Medical Services, reviewed policy for the Private Duty Nursing Program. Jenny Craft, RN, with West Virginia Medical Institute (WVMI), testified that the application was reviewed by a Physician Reviewer who determined that the services were considered a maintenance level of care. Ms. Craft stated that the December 8, 2010 letter from Maxim Healthcare Services did not indicate that ----- required nursing care eight (8) hours or more per day. Although the request was made for 56 hours per week - 16 of which could be used at the parent’s discretion to cover weekend work hours – the Plan of Care does not support the number of hours requested.

Ms. Craft indicated that intermittent nursing care is defined as care provided less than four (4) hours per day.

- 4) -----, the Claimant’s father, testified that he and his wife must record -----’s nutrient input, and record/weigh all stools and vomit released from the child’s body. He indicated that his son attempts to pull out his central line and that his wife is unable to reinsert the tube.

-----and -----, RN, Nurse Coordinator, with [REDACTED] Hospital, stated that they are uncertain about why [REDACTED] Healthcare Services obtained medical information from Dr. [REDACTED] as he is less familiar with the child’s recent health history. -----, Social Worker with [REDACTED] Hospital, testified that ----- is becoming more active as he ages and addressed problems with the child pulling out his central line. A letter dated February 18, 2011 (C-1), written by -----, was provided on behalf of the Claimant. The letter includes information concerning -----’s current condition and details his specific care needs, but was not available at the time of the Department’s application denial. -----indicated that ----- requires much more care than other patients with his diagnosis and stressed that it is vital to keep his central line in place.

The Department's representatives indicated that the Claimant could reapply for Private Duty Nursing services if his representatives wish to provide more current information about the child's condition.

- 5) Medical Necessity Review and Payment Authorization for Private Duty Nursing (MA-01-21) states, in pertinent part:

Private Duty Nursing is considered supportive to the care provided to an individual by the individual's family, foster parents, and/or delegated caregivers, as applicable. Nursing services shall be based on medical necessity. Increases or decreases in the level of care and number of hours or visits authorized shall be based on a change in the condition of the individual, limitation of the program, and the ability of the family, foster parents, or delegated caregivers to provide care.

- 6) Medical Necessity Review and Payment Authorization for Private Duty Nursing (MA-01-21) states that a Plan of Care must be submitted which includes justification for skilled nursing services eight (8) hours or more in a 24-hour period.

- 7) Medical Necessity Review and Payment Authorization for Private Duty Nursing (MA-01-21) states that the following items are excluded from eligibility:

1. Individual is residing in a nursing facility, hospital, residential care facility, intermediate care facility for developmental disabilities ICF/MR or personal care home at the time of delivery of Private Duty Nursing services.
2. Care solely to allow the individual's family or caregiver to work or go to school.
3. Care solely to allow respite for caregivers or individual's family.
4. Care at maintenance level.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that Private Duty Nursing is considered supportive to the care provided to an individual by the individual's family, foster parents, and/or delegated caregivers, as applicable. Nursing services shall be based on medical necessity. Excluded items include care solely to allow the caregiver to go to work or school, solely to allow respite for caregivers, or care at a maintenance level. A Plan of Care must be submitted which includes justification for skilled nursing services eight (8) hours or more in a 24-hour period.
- 2) Documentation provided to the Department in conjunction with the Claimant's December 2010 Private Duty Nursing application does not support a need for labor intensive, hourly nursing.
- 3) Based on information provided during the hearing, the Department acted correctly in denying the Claimant's request for Private Duty Nursing services.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's decision to deny Private Duty Nursing services to the Claimant based on failure to establish medical necessity.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 17^h Day of March, 2011.

**Pamela L. Hinzman
State Hearing Officer**