



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 13, 2006

Ms. _____

Case Name: _____

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 23, 2006. Your hearing request was based on the Department of Health and Human Resources' denial of Private Duty Nursing Services for your son, _____.

In arriving at a decision, the State Hearings 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.

Eligibility for Medicaid and Children with Special Health Care Needs are based on current policy and regulations. One of these regulations states in part: "A Plan of Care must include justification for skilled nursing services eight (8) hours or more in a 24-hour period. Description of needs must include interventions, measurable objectives, short and long term goals with timeframes."

The information submitted at your hearing revealed: The West Virginia Medical Institute did not base their decision upon established Bureau for Medical Services policy.

It is the decision of the State Hearings Officer to **REVERSE** the **ACTION** of the Department to deny private duty nursing services.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Twonna Williams, RN - Bureau for Medical Services
Bonnie Smith, CPS - [REDACTED] DHHR

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

_____,
Claimant,

v.

Action Number: 05-BOR-7028

**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 concluded on March 13, 2006 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 originally scheduled for January 25, 2005 on a timely appeal filed December 15, 2005. The hearing was rescheduled after it was discovered that the Bureau for Medical Services did not send the policy to all parties. The hearing finally convened on February 23, 2006

It should be noted here that the claimant's benefits were continued pending a hearing decision. A pre-hearing conference was not held between the parties, and _____ was not represented by legal counsel.

II. PROGRAM PURPOSE:

The Programs entitled Medicaid and Children with Special Health Care Needs are set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

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 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.

Services for Children with Special Health Care Needs are extended to those children for whom adequate care, treatment and rehabilitation are not available from other than public resources. The Public Welfare Law permits the Program to determine administratively the conditions which will be included in the scope of the Program, such determination to be made on the basis of available funds and facilities. The Program is responsible for location, diagnosis and treatment of children between the age of 0-21 who meet pre-determined medical and financial requirements. Treatment is provided by Board certified specialists.

III. PARTICIPANTS:

_____, Mother of _____
Bonnie Smith, Child Protective Services – [REDACTED] District DHHR
Sandy Estel, RN – Elite Home Health Clinical Supervisor
Twonna Williams, RN/Program Manager I - Bureau for Medical Services
Belinda Livingston, DHHR Associate

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is: Did _____ meet the criteria for Private Duty Nursing Services?

V. APPLICABLE POLICY:

Medicaid Policy Program Instruction: Private Duty Nursing, MA-01-21, dated April 11, 2001

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Medicaid Policy Program Instruction: Private Duty Nursing, MA-01-21, dated April 11, 2001
- D-2 Results of West Virginia Medical Institute's Review

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

1) The West Virginia Medicaid Program has contracted with West Virginia Medical Institute effective January 1, 2001 to expand the scope of WVMi review for Private Duty Nursing (PDN). All PDN services (procedure code W1990) provided to children participating

in Children with Special Health Care Needs (CSHCN) Program (Title V) and Medicaid recipients under age 21 years will require prior authorization from WVMI.

2) Medicaid Policy Program Instruction: "Private Duty Nursing, MA-01-21, dated April 11, 2001 **IV PRIVATE DUTY NURSING SERVICES:** requires **all of the following** (A 1 - 6, B 1-14) *submitted within seven (7) working days prior to the start of care date:*

- A. Physician's Plan of Care (signed and dated) with all of the following: (1 - 6)
 - 1. Diagnosis and procedure; (include 485)
 - 2. Medical history;
 - 3. Prognosis (include specific expectations for individual's diagnosis and condition);
 - 4. Approximate length of time Private Duty Nursing services will be needed;
 - 5. Medical justification for services requested, including orders;
 - 6. Documentation that an individual is medically stable, except for acute episodes that Private Duty Nursing can manage.

- B. Plan of care - documentation of a comprehensive assessment of individual's capabilities including **all of the following:** (1 - 14)
 - 1. Proposed start of care date;
 - 2. Diagnosis and procedures with ICD-9-CM codes;
 - 3. Justification for skilled nursing services eight (8) hours or more in a 24-hour period. Description of needs must include interventions, measurable objectives, short and long term goals with timeframes;
 - 4. Medications, (new or changed) including dose, frequency and route;
 - 5. Technology dependent:
 - a. Ventilator dependent **and one of the following:** (1 or 2)
 - 1. Mechanical ventilator support is necessary for at least eight (8) hours per day and not at maintenance level; or
 - 2. Oxygen supplementation for ventilator dependent individuals at or below an inspired fraction of 40% (FI02 of 0.40).

PHYSICIAN REVIEW REQUIRED:

• Ventilator dependent: if indicators (5 a 1or 2) are not met and individual also requires one or more of the following indicators (5 b, c, d or e)

• Non-ventilator dependent: if one or more indicators (5 b, c, d, or e) are required

- b. Non-ventilator: Tracheostomy care requires documentation of site appearance, type/frequency of wound care/dressing changes and description of any drainage around site. Also, record frequency of
 - c. Oxygen: documentation required concerning rapid desaturation without oxygen;
 - d. Tube feedings: (NG tube, G-tube and J-tube) requires type and frequency of product given. Also include bolus feeding or continuous infusion via pump;
 - e. Intravenous Infusions: Intravenous Infusions, including Total Parenteral Nutrition (TPN), medications and fluids requires documentation of type of line, site, dose, frequency, and duration of infusion. Also record gravity or pump installation.
- 6. Rehabilitation potential including functional limitations related to ADLs, types/frequency of therapies, and activity limitations per physician order;
 - 7. Individual is residing in a home environment;
 - 8. Social history: number, names and relationship of family members to the individual. List the family/in-home caregivers that are trained to care for the individual with supplement of Private Duty Nursing and other health professionals;
 - 9. Record the family's community support system and any transportation requirement;
 - 10. Describe teaching, delegation, assignment of care and availability of Private Duty Nurse;
 - 11. Equipment and supplies necessary for the individual's care;
 - 12. Acuity and Psychosocial Grid with score meeting **one of the following:** (a, b, c, or d)
 - a. 61 points and above: up to 24-hours per day immediately after discharge from a hospital or if there is a significant worsening or decline of condition;

- b. 50 - 60 points: up to 16-hours per day immediately after discharge from a hospital or if there is a significant worsening or decline of condition;
- c. 40 - 49 points: up to 12-hours per day immediately after discharge from a hospital or if there is a significant worsening or decline of condition;
- d. 30 - 39 points: 8-hours per day, if the score is 24 or above on the Psychosocial Grid **in conjunction with** the 30 - 39 points on the Acuity Grid.

Physician review required if information on the Acuity is less than 30 or the Psychosocial Grid does not support the other clinical information provided.

PLAN OF CARE AND NURSING NOTES MAINTAINED IN THE INDIVIDUAL'S HOME

- 13. Family/in-home caregiver requirements with **all of the following:** (a, b, and c)
 - a. Family must have at least one person trained and fully able to care for individual in the home. Documentation of the demonstration by family/in-home caregiver of specific skills, including Cardiopulmonary Resuscitation (CPR) instruction and certification. A ventilator dependent individual requires availability of two (2) or more trained caregivers;
 - b. Family/in-home caregiver ability to maintain a safe home environment, including an emergency plan;
 - c. Family/in-home caregiver will work toward maximum independence, including finding and using alternative resources as appropriate.
- 14. Home environmental requirements with **all of the following:** (a, b, c, d, e, and f)
 - a. Adequate electrical power including back-up power system;
 - b. Adequate space for equipment and supplies;
 - c. Adequate fire safety and adequate exits for medical and other emergencies;
 - d. Clean environment to the extent that the individual's life and health is not at risk;
 - e. Working telephone available twenty-four (24) hours a day;
 - f. Notification to power companies, fire department, and other pertinent agencies of the presence of a special needs person in the household, to ensure appropriate response in case of power outage or other emergency.

3) According to Ms. Liz Miller's testimony, _____' need for Private Duty Nursing was denied based upon the current Manchin Administration's mandates. The current

Bureau for Medical Services policy on Private Duty Nursing was not used as a basis of the denial. At this point, the 'Hearsay Rule' was explained to Ms. _____. She could object to the statements made by Ms. Miller and they would not be considered in the final decision. Ms. _____ was unable to understand the explanation and received assistance from Ms. Bonnie Smith. Ms. _____ objected and the references to the current administrations mandates would not be considered by the State Hearing Officer.

4) Upon questioning by the State Hearing Officer, Ms. Liz Miller testified that _____' medical condition has not changed for several years.

5) The Department's action to deny _____ Private Duty Nursing Services was REVERSED at the conclusion of the fair hearing. The Department did not use established policy to deny the request for continued services.

VIII. CONCLUSIONS OF LAW:

1) The West Virginia Medicaid Program has contracted with West Virginia Medical Institute effective January 1, 2001 to expand the scope of WVMI review for Private Duty Nursing (PDN). All PDN services (procedure code W1990) provided to children participating in Children with Special Health Care Needs (CSHCN) Program (Title V) and Medicaid recipients under age 21 years will require prior authorization from WVMI.

2) _____ medical condition has not changed for several years, and continues to have a need for Private Duty Nursing Services.

3) The WVMI failed to review the need for Private Duty Nursing Services according to the guidelines established in Medicaid Policy Program Instruction: Private Duty Nursing, MA-01-21, dated April 11, 2001.

IX. DECISION:

It is the decision of this State Hearing Officer to **REVERSE** the Department's **ACTION** in this particular matter.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 13th Day of March, 2006.

**Ray B. Woods, Jr., M.L.S.
State Hearing Officer**