



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
Post Office Box 2590  
Fairmont, WV 26555-2590

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

March 6, 2006

\_\_\_\_\_ for

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Mr. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 20, 2006. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for Medicaid to pay Private Duty Nursing Services.

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 reimbursement of Private Duty Nursing Services is based on current policy and regulations. Some of these regulations require that medical documentation be submitted within seven working days to verify medical necessity. This documentation must include justification for skilled nursing services eight (8) hours or more in a 24-hour period. The description of needs must include interventions, measurable objectives, short and long term goals with timeframes. Program exclusions include care solely to allow respite for caregivers or individual's family and care at a maintenance level. [Medicaid Program Instruction MA-01-21 April 11, 2001]

The information submitted at your hearing fails to justify the need for skilled nursing eight (8) hours or more in a 24-hour period. The medical treatment being provided to your daughter at the time of the eligibility determination was at a maintenance level of care.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying your request for Medicaid reimbursement of Private Duty Nursing Services.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Evelyn Whidby, BMS

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

\_\_\_\_\_,  
**Claimant,**

**v.**

**Action Number: 05-BOR-6813**

**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 6, 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 convened on January 20, 2006 on a timely appeal, filed September 28, 2005.

**II. PROGRAM PURPOSE:**

The program entitled Medicaid is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and 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 provider participating in the program.

### **III. PARTICIPANTS:**

\_\_\_\_\_ (by phone)

Evelyn Whidby, Hearings Coordinator, BMS (by phone)

Barbara White, Program Manager II, BMS (by phone)

Liz Miller, RN, WVMI (by phone)

Debbie Pauley, RN, WVMI (observing, by phone)

Helen Ford, Secretary, BMS

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

### **IV. QUESTIONS TO BE DECIDED:**

The question to be decided is whether the Department was correct in their action to deny the Claimant's request for Medicaid reimbursement of Private Duty Nursing Services.

### **V. APPLICABLE POLICY:**

Medicaid Program Instruction MA-01-21 dated 4-11-01 from [REDACTED] Acting Commissioner, Bureau for Medical Services titled (REVISED) MEDICAL NECESSITY REVIEW AND PAYMENT AUTHORIZATION FOR PRIVATE DUTY NURSING (W1990).

### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

#### **Department's Exhibits:**

D-1 Medicaid Program Instruction MA-01-21 dated 4-11-01

D-2 Notice of Review Determination Private Duty Nursing Denial West Virginia Medicaid dated 7/11/05.

D-3 WVMI Private Duty Nursing Report (from 7/4/05 thru 9/1/05)

D-4 Provider Notice of Private Duty Nursing Services reconsidered determination West Virginia Medicaid dated 8/18/05.

### **VII. FINDINGS OF FACT:**

- 1) In response to the Claimant's request for Medicaid Reimbursement of Private Duty Nursing Services, West Virginia Medical Institute, hereinafter WVMI, sent a Notice of Review Determination Private Duty Nursing Denial West Virginia Medicaid on July 11, 2005 (exhibit D-2). This notice states in pertinent part:

This is in reference to your request for private duty nursing, 56 hours per week, from 7/4/2005 to 9/1/2005. The documentation provided did not support medical necessity for this service, as the child's condition and level of care would be better met with intermittent nursing visits.

A Provider Notice Reconsideration Determination, exhibit D-4, was sent to the Claimant on August 18, 2005 after a different physician reviewed the medical documentation submitted for medical necessity. The reconsideration by a second physician reviewer resulted in the same findings as the original denial.

- 2) Liz Miller, RN, WVMI, testified that the Claimant was approved for several 60-day certification periods of Private Duty Nursing (PDN) Services that began when the child was discharged from the hospital on October 25, 2004 and continued through July 3, 2005. Ms. Miller stated that she reviewed this case for medical necessity and cited her findings in exhibit D-3. She testified that the child was 15-months old at the time of this review and that she was very stable. The child needed tube feeding and occasional oxygen but she was now stable enough to be taken swimming and to family outings by the parents. She stated that the parents were often home when the nurse was there and because the child did not require skilled nursing care, this service could not be provided as a respite care. Ms. Miller stated that the child's care at the time of this review was at a maintenance level.
- 3) Mr. \_\_\_\_\_ did not contest the medical findings presented by Ms. Miller and testified that his wife insisted that care for their daughter be provided by a nurse. He stated that his wife is no longer in the home and he now has full custody of his daughter. He stated that the situation is now under control as he is able to private pay individuals to assist him with the care of his daughter.
- 4) Medicaid Program Instruction MA-01-21 dated 4-11-01 from Phillip Lynch, Acting Commissioner, Bureau for Medical Services titled (REVISED) MEDICAL NECESSITY REVIEW AND PAYMENT AUTHORIZATION FOR PRIVATE DUTY NURSING (W1990), 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. 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.
- 5) Medicaid Program Instruction MA-01-21 dated 4-11-01 from [REDACTED] Acting Commissioner, Bureau for Medical Services titled (REVISED) MEDICAL NECESSITY REVIEW AND PAYMENT AUTHORIZATION FOR PRIVATE DUTY NURSING (W1990), states under section IV.B.3 the 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.
- 6) Medicaid Program Instruction MA-01-21 dated 4-11-01 from [REDACTED] Acting Commissioner, Bureau for Medical Services titled (REVISED) MEDICAL NECESSITY REVIEW AND PAYMENT AUTHORIZATION FOR PRIVATE DUTY NURSING (W1990), section VII (Program Exclusions), states that care solely to allow respite for caregiver or individual's family and/or care at a maintenance level are excluded.

### **VIII. CONCLUSIONS OF LAW:**

- 1) In order to be eligible to receive Medicaid reimbursement for Private Duty Nursing Services, an individual must meet the “medical necessity” criteria found in the Medicaid Program Instruction MA-01-21. Private Duty Nursing Services policy also excludes Medicaid reimbursement of PDN Services if it is determined that the care being provided is at a maintenance level.
- 2) The uncontested evidence presented by the Department confirms that the Claimant’s medical condition no longer required nursing services at the level needed to meet the “medically necessary” criteria for the Private Duty Nursing Services Program. Based on the evidence, nursing care was being provided at a maintenance level at the time of the eligibility determination.

### **IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Department’s action to deny your application for Medicaid reimbursement of Private Duty Nursing services during the period July 4, 2005 through September 1, 2005.

### **X. RIGHT OF APPEAL:**

See Attachment

### **XI. ATTACHMENTS:**

The Claimant’s Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 6th Day of March, 2006.**

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**Thomas E. Arnett**  
**State Hearing Officer**