



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

July 25, 2006

_____ for

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 15, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate benefits and services provided under the Medicaid, Private Duty Nursing Services Program.

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 son at the time of the eligibility determination was at a maintenance / respite level of care.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your benefits and services provided under the Medicaid Private Duty Nursing Services Program.

Sincerely,

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

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

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

_____,
Claimant,

v.

Action Number: 05-BOR-7037

**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 July 25, 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 to convene on February 23, 2006 but was reassigned and rescheduled to convene on June 15, 2006 on a timely appeal filed November 3, 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:

_____, _____, Claimant's Mother / Representative
Evelyn Whidby, Hearings Coordinator, BMS (observed telephonically)
Debbie Pauley, RN, WVMI (participated telephonically)
_____, RN, BMS, PDN Program Manager (participated telephonically)
Belinda Livingston, DHHR Associate (observed telephonically)

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 is correct in its proposal to terminate Medicaid reimbursement of Private Duty Nursing Services.

V. APPLICABLE POLICY:

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).

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 9/30/05
- D-3 Request for reconsideration dated 10/11/05
- D-4 WVMI Reconsideration of Initial Denial Determination dated 10/18/05
- D-5 Provider Notice of Private Duty Nursing Services, Reconsideration Determination, West Virginia Medicaid dated 10/28/05
- D-6 WVMI Private Duty Nursing Report dated 9/21/05

VII. FINDINGS OF FACT:

- 1) On or about September 30, 2005, the Claimant was notified (Exhibit D-2) by West Virginia Medical Institute (WVMI) that Private Duty Nursing services, hereinafter PDN, for _____ were not medically necessary. This notice states, in pertinent part:

Authorization of private duty nursing, a total of 15 hours per week, from 9/21/05 to 11/19/05, has been denied. The physician reviewer has determined that the patient's condition and level of care required do not rise to the level of care required for skilled nursing services. The patient is no longer receiving tube feedings and is attending occupational therapy on an outpatient basis which does not meet the criteria for home nursing.

- 2) The Claimant's denial was based, in part, on the findings documented in Exhibit D-6 (WVMI Private Duty Nursing Report dated 9/21/05). The Nurse's Notes, found on page 2 of 3 state –

“Reflect care during the day and on some evenings. Care includes straight caths and peri care, bowel regimen, bathing, meals and med admins, as well as ROM exercises. Also patient wears braces, upper body and legs and uses a wheelchair. He is noted to be going to outpatient occupational therapy. Gtube was removed on 8/5/05 per notes.”

“BMS has directed care for this patient in the past. Per new direction from BMS, we are to send to physician for review of skilled need which this patient does not meet. He receives straight caths 3 times a day but only receives skilled nursing 16 hours per week which doesn't meet skilled nursing hours of 40 hours per week or mor. Also he is attending outpatient occupational therapy and I have a request on my desk no for OT 5 times a week for 8 weeks which will not meet home health nursing either as PT is not homebound.”

- 3) A request for reconsideration was received (Exhibit D-3) on October 14, 2005 and a Reconsideration of Initial Denial Determination was completed (Exhibit D-4). This document includes the following notation by the reviewing physician:

Chart reviewed, patient does not meet criteria for PDN. It is my professional opinion that patient does not meet criteria for private duty nursing nursing.

- 4) On or about October 28, 2005, the Claimant was notified via a Provider Notice of Private Duty Nursing Services Reconsidered Determination, West Virginia Medicaid (Exhibit D-5), that “WVMI received your request for reconsideration of the initial denial of authorization for the above listed patient. After due consideration of all relevant factors including documentation in the medical record and any additional information provided, WVMI upheld the initial denial. This in reference to the certification period from 9/21/05 to 11/19/05 for 16 hours per week skilled nursing care.”
- 5) Testimony received in support of the Department's proposal reveals that the agency who was providing nursing services to the Claimant requested authorization for only 16 hours of private duty nursing services per week. While this is considered intermittent care (less than 40 hours per week), the Claimant has been approved for this level previously, although it was noted that he has typically been receiving only 8 hours of services per week. When this certification period was requested, the Claimant's feeding tube had been removed and he was receiving outpatient physical therapy which confirms that he is no longer homebound. The changes in his medical condition indicate that he has become more stable and that his care can be provided by appropriate respite care. The Claimant does not require skilled nursing services
- 6) Ms. _____ testified that her son did have his feeding tube removed at the time of this evaluation but it had to be reinserted after he lost approximately 15 pounds. He also had another major surgery on his left arm that required a lengthy recovery. She is concerned that medical necessity is determined by individuals who never meet her child. She testified that she was previously approved for 16 hours, and while she only used 8 hours, she and her son

looked forward to the break from each other. She stated that she is a single parent and she does not get any other help for the care of her son.

- 7) Because the Claimant's case was a reevaluation for continued participation in the PDN Program and the Claimant was not afforded the opportunity to request continued benefits during the appeal, a ruling was made at the hearing to reinstate the Claimant's Medicaid Private Duty Nursing reimbursement effective September 21, 2005 with benefits continuing until a decision on the matter is rendered.
- 8) 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.
- 9) 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 under section II (**Maintenance care**) is the Level of care needed when the goals and objectives of the care plan are reached and the condition of the individual is stable/predictable. A maintenance level of care is determined when the plan of care does not require the skills of a licensed nurse in continuous attendance, or the individual, family, foster parents, or caregivers have been taught and have demonstrated the skills and abilities to carry out the plan of care.

This section goes on to define **respite** care as short term or intermittent care and supervision in order to provide an interval of rest or relief to family or caregivers.

Skilled Nursing services are defined as services provided under the licensure, scope and standards of the West Virginia Nurse Practice Act, by a Registered Nurse (RN) under the direction of a physician, or a Licensed Practical Nurse (LPN) under the supervision of a Registered Nurse and the direction of a physician.

- 10) 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 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.
- 11) 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), 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 care is being provided at a maintenance or respite level of care.
- 2) The evidence presented by the Department confirms that the Claimant’s medical condition, at the time of the evaluation, no longer required nursing services at the level needed to meet the “medically necessary” criteria for the Private Duty Nursing Services Program. While it appears that the Claimant has suffered some medical setbacks since the evaluation was completed, the evidence reveals that nursing care was being provided at a maintenance level at the time of the eligibility determination. A new application for PDN services will be required to establish eligibility.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department’s proposal to terminate Medicaid reimbursement of Private Duty Nursing services. Termination is effective immediately.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant’s Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 25th Day of July, 2006.

Thomas E. Arnett
State Hearing Officer