



July 13, 2017

[REDACTED]

[REDACTED]

RE: [REDACTED], a minor v. WVDHHR
ACTION NO.: 17-BOR-1779

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at a decision, the Board of Review 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.

You will find attached an explanation of possible actions that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson
State Hearing Officer
State Board of Review

Enclosure: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Angela Signore

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

[REDACTED], a minor,

Appellant,

v.

ACTION NO.: 17-BOR-1779

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for [REDACTED], a minor. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on July 7, 2017, on an appeal filed April 28, 2017.

The matter before the Hearing Officer arises from the April 13, 2017 decision by the Respondent to reduce Private Duty Nursing hours.

At the hearing, the Respondent appeared by Anita Ferguson, Bureau for Medical Services (BMS). Appearing as witnesses on behalf of the Respondent were [REDACTED], Medicaid Appeals Coordinator with [REDACTED]; [REDACTED], Manager of [REDACTED]; Dr. [REDACTED], Medical Director with [REDACTED]; Dr. [REDACTED], Medical Director with [REDACTED]; Dr. [REDACTED], Medical Director with [REDACTED]; [REDACTED], Member Case Manager with [REDACTED]; and [REDACTED], Contract Compliance Manager with [REDACTED]. The Appellant was represented by his mother, [REDACTED]. The Appellant representative testified on behalf of the Appellant. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

- D-1 Bureau for Medical Services Private Duty Nursing Policy 532
- D-2 [REDACTED] denial letters and notices
- D-3 [REDACTED] past approval notices
- D-4 [REDACTED] Referral and Claims Reports
- D-5 [REDACTED] call logs
- D-6 Medical documentation provided by the member to [REDACTED]
- D-7 Clinical documentation received by BMS from [REDACTED]

Appellant's Exhibits:

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) On April 13, 2017, a notice of reduction of medical coverage was issued decreasing the Appellant's Private Duty Nursing from 24-hours per day to 8-hours per day, 7 days per week, starting April 19, 2017, and expiring June 19, 2017. (Exhibit D-2)
- 2) On April 18, 2017, a second review notice of reduction of medical coverage was issued upholding [REDACTED] initial reduction of the Appellant's Private Duty Nursing from 24-hours per day to 8-hours per day, 7 days per week, starting April 19, 2017, and expiring June 19, 2017. (Exhibit D-2)
- 3) On April 27, 2017, a letter was issued notifying the Appellant that [REDACTED] Internal Appeal Committee reviewed and upheld the initial reduction of the Appellant's Private Duty Nursing to 8-hours per day. (Exhibit D-2)
- 4) [REDACTED] is the Utilization Management Contractor (UMC) assigned by BMS to manage the Appellant's Medicaid benefits.
- 5) The Appellant is a 2-year-old child diagnosed with Infantile Spinal Muscular Atrophy (SMA). (Exhibit D-4)
- 6) The Appellant suffers from respiratory muscle weakness and acute respiratory failure. He cannot breathe spontaneously and requires a trach ventilator 24-hours per day. (Exhibits D-4 and D-7)
- 7) The Appellant is unable to eat orally and requires use of feeding tube. (Exhibit D-4)
- 8) The Appellant requires oxygen, nebulizer treatments, and suctioning to assist with breathing. (Exhibit D-4)
- 9) The Appellant has not been hospitalized since December 2016. (Exhibit D-4)
- 10) The Appellant has been receiving Private Duty Nursing 24-hours per day, 7 days per week in his home since hospital discharge.
- 11) Medical information provided to [REDACTED] by the Appellant and Appellant's physician do not reflect that the Appellant has had a recent discharge from the hospital or a worsening in condition. (Exhibits D-4 and D-6)
- 12) From February 18, 2017 through April 19, 2017, the Appellant's oxygen readings were 99-100% on room air, there were no ventilator changes, the Appellant continued to tolerate bolus feedings well, and it is documented that the Appellant was doing well at home. (Exhibit D-6)

13) Patient goals for the February 18, 2017 to April 18, 2017 and the April 19, 2017, to June 17, 2017 certification periods were primarily maintenance in nature. (Exhibit D-6)

14) The Acuity and Psychosocial Grid scores submitted were 22 and 94.5 for a total of 116.5. (Exhibit D-4)

APPLICABLE POLICY

West Virginia Bureau for Medical Services Manual (WVBMSM) §200 provides that:

Definitions and Acronyms apply to all West Virginia Medicaid Services including those covered by Chapter 532:

Maintenance Care: Level of care needed when the goals and objectives of the care plan are reached and the condition of the member is stable/predictable.

Example: For the mechanical ventilated member, stable condition will be evidenced by...vital signs stable, blood gases stable with oxygen greater than 92% and the pulse oximetry greater than 92%, the plan of care does not require the skills of a licensed nurse in continuous attendance, or the family has been taught and has demonstrated the skills and abilities to carry out the plan of care.

Respite: Short term or intermittent care and supervision in order to provide an interval of rest or relief to family or caregivers.

WVBMSM §532 reads in part:

Nursing services shall be based on medical necessity. Increases or decreases in the level of care and number of hours shall be based on a change in the condition of the member...and the ability of the family caregivers to provide care.

WVBMSM §532.2. B Screening Criteria and Service Requirements reads in part:

Nursing Plan of Care must include all of the following: ...

3. Justification for skilled nursing services eight hours or more in a 24-hour period...
13. Acuity and Psychosocial Grid with score meeting one of the following:

- 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 in 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 in condition;
- d. 30-39 points: eight 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.

WVBMSM § 532.3 Significant Changes in Condition reads as follows in part:

Comprehensive assessments must be updated and submitted to the UMC nurse reviewer by the next workday after any significant change in condition, (e.g., emergency room visit, hospital admission), any change in status that will increase or decrease services.

WVBMSM §532.5 Program Exclusions reads as follows in part:

Private Duty Nursing services are not billable solely to allow the member's family to work or go to school; solely to allow respite for the caregivers; or to provide care at a maintenance level.

DISCUSSION

The Appellant is a recipient of Medicaid and has been receiving 24-hour Private Duty Nursing 7 days per week since his discharge from the hospital in December 2016. Policy requires that nursing services shall be based on medical necessity and require prior authorization from the Respondent's UCM to determine medical necessity. [REDACTED] is the Appellant's assigned UCM. [REDACTED] denied the requested 24-hour Private Duty Nursing and partially approved 8-hours of Private Duty Nursing for the Appellant 7 days per week. [REDACTED] contends that 24-hour Private Duty Nursing 7 days per week is not medically necessary as the Appellant has not recently been discharged from the hospital or had a significant decline in condition. The Appellant's representative argues that although the Appellant's condition has not worsened, it has not improved, and therefore he should continue to receive Private Duty Nursing at a rate of 24-hours 7 days per week.

Pursuant to policy, the Respondent has the responsibility to prove by a preponderance of evidence that policy was followed in determining the Appellant's medical eligibility for the requested hours of Private Duty Nursing. The Respondent's witness, Dr. [REDACTED] testified that the Acuity and Psychosocial Grid scores met the 24-hour per day threshold. However, per policy, scores at 61 points and above are only eligible for up to 24-hours per day Private Duty Nursing immediately after discharge from a hospital or if there is a significant worsening or decline in condition. The Appellant had not had a recent discharge from the hospital and [REDACTED] determined there was no worsening in medical condition, therefore Private Duty Nursing approvals were based on criteria at the 30-39-point threshold for 8-hours per day due to no requirement at this level for the Appellant to have met the hospital discharge or condition worsening criteria. Dr. [REDACTED] testified the medical documentation reviewed did not indicate a decline in the Appellant's condition and stated the Appellant's condition was relatively stable. The Respondent's witness, [REDACTED], testified that the Appellant received no change in care from January 2017 through the end of April 2017. She testified that the Appellant had the exact same settings on ventilator and feeding care the entire time 24-hour per day nursing was received and that there was no decline in the Appellant's condition over that period. Ms. [REDACTED] further testified there were times 24-hour nursing was not available and the Appellant's family was willing and able to provide care due to the stability of the Appellant's condition. Ms. [REDACTED] testified that pursuant to policy, the Appellant's needs are currently considered maintenance care.

The Appellant representative testified that the Appellant's medical condition is progressive with his symptoms worsening over time and that he is maintaining at his current level of health only because of his 24-hour per day nursing. The Appellant representative testified that prior to receiving 24-hour per day nursing the Appellant was hospitalized approximately 10 times and has not been hospitalized since receiving his current level of care. The Appellant representative testified that she is a single mother and needs 24-hour per day nursing; she testified that 8-hours per day nursing will only allow for her to sleep. The Appellant testified that if the determination could not be viewed from a medical point of view that it should be viewed from a mechanical point of view and that she is unable to care for the Appellant receiving only 8-hours per day nursing. The Appellant representative testified that she cannot transport the Appellant to the hospital by herself, there would be no way she could go grocery shopping, to court hearings, or go to the doctor without 24-hour per day nursing. The Appellant testified that she has another child that lives in the home and that the reduction in nursing would be detrimental to the Appellant's health and the life that the family lives. The Appellant representative's argument was primarily focused on the Appellant's need for 24-hour per day nursing to provide the Appellant representative with respite. No testimony was provided by the Appellant representative to support the medical necessity of 24-hour per day nursing.

Pursuant to policy, the UMC must be notified of significant changes in the Appellant's condition. No testimony or evidence was presented to indicate that the UMC had ever been notified of a significant change in the Appellant's condition. Letters submitted by the Appellant medical staff reflect that 24-hour per day nursing care is required for maintenance of the Appellant's current functioning and to prevent hospitalization. Further, the letters reflect that nursing is needed for scheduling the Appellant's medical appointments, for transporting the Appellant to medical appointments, for assisting the Appellant's mother with problem solving, and because the parents need to give attention to the sibling living in the home. No narrative was contained in the medical

provider letters to indicate that the Appellant's condition is worsening; no justification was given for medical necessity for continued 24-hour per day Private Duty Nursing. Although the Appellant representative testified that the nature of the Appellant's medical condition will cause progressive deterioration in the Appellant's condition, no evidence was provided or witness testimony given to establish medical necessity for continued 24-hour per day nursing. Home Health Certification and Plan of Care goals are primarily maintenance oriented and do not specify the need for stabilizing worsening symptoms. These documents further reflect that the family is responsible for Appellant care when nursing services are not provided. Testimony and documentation reflect that the Appellant's mother has been trained in Appellant care and has provided care to the Appellant during times when 24-hour per day nursing has not been available.

After weighing the evidence and testimony presented, it is clear the Appellant's medical needs are stable and predictable and meet the definition for maintenance care. Pursuant to policy, 24-hour per day Private Duty Nursing is not appropriate for maintenance care. Although the Appellant requires a high level of care, the information provided did not support evidence of a worsening of the Appellant's condition. The Respondent was correct in its decision to reduce Private Duty Nursing to 8-hours per day.

CONCLUSIONS OF LAW

- 1) The Appellant has not had a recent hospital discharge or documented worsening of medical condition.
- 2) Private Duty Nursing 24-hours per day has not been determined to be medically necessary.
- 3) The Respondent was correct in its partial approval of Private Duty Nursing at 8-hours per day.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the decision by the Department to reduce the Appellant's authorized hours of Private Duty Nursing.

ENTERED this 13th day of July 2017.

Tara B. Thompson
State Hearing Officer