

STATE OF WEST VIRGINIA
THIRTEENTH JUDICIAL CIRCUIT
OFFICE OF THE COURT MONITOR
STATE CAPITOL COMPLEX
BUILDING 6, ROOM 850
CHARLESTON, WEST VIRGINIA 25305

LOUIS H. BLOOM
JUDGE



DAVID G. SUDBECK
COURT MONITOR

MEETING OF THE PARTIES

In E.H., et al., v. Khan Matin, et al.

WEDNESDAY, SEPTEMBER 30, 2015

MINUTES

PRESENT: David G. Sudbeck, Kyle Blackburn, Vickie Jones, Christopher Dodrill, Cynthia Beane, Teresa Brown, Regina Mayne, Lydia Milnes, Karen Villanueva-Matkovich, Allison Anderson, Kelly Morgan

I. COURT MONITOR REPORT

David Sudbeck started the meeting by mentioning there were no new grievances filed since the last Meeting of the Parties to report on. David Sudbeck advised that he provided the Hartley Plan in response to a FOIA request received by his office from Thomas Casto of Lewis Glasser Casey and Rollins. David was unaware of the purpose for the FOIA request.

David Sudbeck asked about the update from the Petitioners RFR and stated that he too was unsure how he would investigate the allegations without specific information as to the specific patients involved. Lydia Milnes replied that Petitioners' concern is with DHHR's policies on the issues outlined in an email sent out to The Parties. They were not asking David Sudbeck to investigate any particular patient's individual experience. The question is whether DHHR has policies on handling patients with violent/aggressive behaviors; policies on pressing charges against patients for incidents that occur in the Hospitals; policies on discharge of patients to police custody; policies on notifying guardians prior to such discharges; policies on discharge planning when the proposed discharge is to police custody. Assuming the policies do exist, they are asking whether those policies comport with the laws protecting patients' rights to discharge planning, treatment in the least restrictive environment. Kelly Morgan advised that DHHR would respond to the Request for Resolution by October 14, 2015.

David Sudbeck requested an update on the American Medical Foundation and if a proposal could be produced. Kelly Morgan responded that DHHR had a CV from Evelyn Smith, the Executive Director; although, she wouldn't be the one actually performing the review. DHHR understood that David was requesting CVs from the team members; however, the precise team members will not be finalized until a specific timeframe is established. Kelly Morgan recommended obtaining a proposal from Evelyn Smith which sets forth the minimum qualifications of the team members as well as the scope or parameters of the review. The cost would be \$350 per hour. Once the Legal Aid Audit was complete, then a number of files for review could be determined. Lydia Milnes advised that the Legal Aid Audit was in fact complete and that LAWV was working toward producing a final report. Kelly Morgan requested David Sudbeck to make a recommendation to Judge Bloom as to the choice of expert to conduct the review, once the proposal is obtained from American Medical Foundation. David responded that he preferred the parties to submit an Agreed Order on that issue.

II. BHHF REPORT

Vickie Jones reported that she had nothing on the Hartley case to discuss.

III. PETITIONER REPORT

Lydia Milnes asked for a follow up on petitioner's discovery request regarding applications, interviews and new hires for direct care employees at the two hospitals since January 2015, and Kelly Morgan stated she would follow up on that issue. In addition, Lydia Milnes asked about a time frame for DHHR's response to Petitioner's latest RFR, and Kelly Morgan stated they would provide a written response within two weeks.

IV. BMS REPORT

Cindy Beane mentioned during the TBI Waiver Update that as of August 2015 there were 52 active members living at home in their community.

Cindy also distributed the current TBI waiver report [copy attached below]

Next Meeting: Friday November 20, 2015
10:00 a.m.-12:00 noon
One Davis Square
Conference Room 134 Charleston, WV 25301

**WV Traumatic Brain Injury (TBI) Waiver Program
Implementation through August 2015**

MNER Summary: Since February 1, 2012, the Administrative Services Organization (ASO) has received, processed and/or made initial determinations on two hundred and thirty-four (234) Medical Necessity Evaluation Request Forms (MNER)/applications.

- ❖ Of those two hundred and thirty-four (234) applications (submitted MNER):
 - 28 applications were closed - no evidence of a TBI
 - 30 applications were withdrawn
 - 4 application pending assessment
 - **172 applicants received medical eligibility determination assessments**
 - 39 applicants did not meet medical eligibility
 - 133 applicants were considered medically eligible based on their PAS and Rancho Los Amigos scores
 - 17 applicants were denied financial eligibility
 - 32 applicants withdrew their case after medical eligibility was determined
 - 6 applicants are awaiting financial eligibility
 - 2 applicants deceased prior to notification of medical eligibility
 - 18 members have discontinued their enrollment since 2/2012
 - 4 member deceased
 - 54 Active Members in August 2015

# MNER Applications Received Per Month							
2012	# MNER Received	2013	# MNER Received	2014	# MNER Received	2015	# MNER Received
January	N/A	January	6	January	9	January	5
February	4	February	5	February	6	February	7
March	2	March	10	March	4	March	5
April	4	April	4	April	8	April	5
May	3	May	9	May	9	May	3
June	1	June	4	June	7	June	6
July	2	July	10	July	6	July	7
August	5	August	10	August	2	August	4
September	7	September	5	September	7	September	
October	1	October	10	October	8	October	
November	3	November	5	November	4	November	
December	2	December	4	December	6	December	
2012 Total	34	2013 Total	82	2014 Total	76	2015 Total	42
Total since program implementation February 2012							234

Outreach Efforts Summary: In January 2012, the ASO initially sent emails to all existing Aged and Disabled Waiver Homemaker Agencies, Case Management Agencies, I/DD Waiver Providers and Personal Care Providers. In early February 2012, all applicable referral sources including Nursing Homes, Hospitals and Licensed Rehabilitation Centers were emailed.

This correspondence announced the TBI Waiver Program, outlined eligibility requirements and supplied copies of the application (MNER) form (*these emails are not included in 1887 Email contacts indicated below).

Since March of 2012, ASO staff has conducted statewide outreach efforts to include: scheduled face-to-face meetings within the facilities, presentations at local and statewide settings and meetings with the directors of the Aging and Disability Resource Centers.

Additionally, the ASO offers/provides training and technical assistance to the eighteen (18) enrolled provider agencies. Training topics include the Medicaid requirements for covered services (Case Management, Personal Attendant Services and Cognitive Rehabilitation Services) and general information about supporting individuals with TBI.

The ASO targets outreach for each agency selected to provide services for enrolled members. Outreach focuses on providing guidance in completing the financial eligibility process and compliance with Medicaid forms. Additionally, the ASO provides technical assistance to resolve specific member needs.

Types and Numbers of Outreach Efforts Made for the WV TBI Waiver Program	
Type of Outreach	# Outreach Efforts
General Outreach	
Email	*1887
Phone	1252
Face-to-Face	524
Presentations/Outreach (ex. WV NASW Conference, local DHHR)	61
For Enrolled Providers	
Training-Webinar	36
Face-to-Face Technical Assistance	63
Phone Technical Assistance	426
Total	4249

Personal Attendant Services

