

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.

MONDAY, NOVEMBER 15, 2012

MINUTES

PRESENT: Vickie Jones, Dee Weston, Wendy Elswick, David G. Sudbeck, Sheila Kelly, Kim Stitzinger Jones, Allen Campbell, Cindy Beane, Teresa Brown, Joanna Bowles, dan connery.

I. COURT MONITOR REPORT

David asked Vickie for information regarding a complaint he had received that personal supports funding for ID/DD individuals had been reduced lately, causing some problems serving certain individuals. Vickie indicated that she was unaware of any cuts but stated that she knew that the Legislature had swept funding from the Colin Anderson funds as individuals who received supplemental funding through that program became deceased or ended up in much more restrictive settings due to medical fragilities. She will check with Beth Morrison and let David know the answer to his question.

David also inquired as to the status of the court order regarding improved payment of health service workers and LPNs in the state hospitals that had been ordered by Judge Bloom during the recent hearing. Wendy Elswick explained that she had been awaiting the court transcript in order to correctly word the order. She received the transcript earlier this week and hopes to have the order prepared early next week.

II. BHHF REPORT

Vickie Jones asked if anyone had comments regarding the data she distributed previously that described the commitment rate by comprehensive center across the state. She has not yet received any questions or concerns. Sheila stated that she had reviewed the data but didn't believe that it was particularly useful since there were so many reasons for the differences in commitment rates from one center to another. She pointed out that Dan Hedges had requested that the date be prepared in that format. Dee Weston indicated that she would confer with Dan to obtain more information regarding his specific needs or thoughts on the matter.

Vickie announced that Linda Daley, the current administrator at Lakin Hospital, has been promoted to replace Kevin Stalnaker as Deputy Commissioner of Operations. She will assume this position effective November 16, 2012, and will be attending the MOPs.

III. PETITIONER REPORT

Dee Weston inquired as to the status of the implementation of recommendations made as a result of the Request for Resolution concerning consistency of advocacy policies and procedures at Bateman and Sharpe. It was decided that a meeting with Vickie Jones, David Sudbeck and Bill Albert of Legal Aid will occur in the near future to address this issue.

Dee also requested clarification/additional documentation on the employee overtime process for both Hospitals. There is still some disagreement or inconsistency as to the definition of "voluntary" vs. "mandatory" use of overtime. Dee indicated that she would like to review all work weeks over standard working hours of 40 hours. After discussion with Wendy Elswick, there was clarification that the issue of concern was the freedom of the employee to choose to work overtime and not be compelled to do so. The Bureau voiced concern that there will always be overtime, whether it be voluntary or mandatory, and that the hospital will always be in the unfortunate position of requiring overtime, although as seldom as possible.

Dee also raised a concern regarding the involuntary injection of antipsychotic medication to patients who refused the medication orally. Vickie Jones explained that as a general policy, medication is not injected to refusing patients unless there is a dangerous or life threatening situation. Dee stated that the advocates had concerns that the clinical teams were mandating injections through an overly liberal definition of "danger". She requested a copy of the hospital policies in this matter. Vickie stated that she would supply petitioner with policies and procedures concerning medication for both hospitals.

Allen Campbell also inquired as to the issue surrounding female forensic patients' release into the community which was raised at the last court hearing and suggested that new issues be initially addressed at the Meeting of the Parties and not introduced at a court proceeding. Dee indicated that she would obtain a better idea of advocacy concerns in this matter and return the issue to the next MOP.

IV. BMS REPORT

Cindy Beane reported on the status of the TBI Waiver and supplied a document explaining the enrollment and break down of enrollees by county. (A copy of that document follows these minutes.) BMS has advised CMS that they will be amending the eligibility guidelines for the program to allow applications from individuals not currently institutionalized. Once new language for the application has been formalized, she will bring it before the Parties to review.

V. SPECIAL ASSISTANT REPORT

Sheila Kelly had no report at this time. David announced that Sheila will be retiring from employment in state government to assume a position as clinical director at Starlight Behavioral Health Services in Huntington. The group expressed their appreciation to Sheila for her service and discussed whether it was necessary to replace her. Most felt that any further investigations that might need to be done could be completed contractually, possibly even by Sheila. Dee expressed concerns

that plaintiffs did not want out of state consulting firms with inadequate background spending time investigating West Virginia issues. The Parties will consider the matter and discuss further at the next meeting.

VI. OTHER

Next Meeting: January 23, 2013
10:00 a.m.-12:00 noon
Covenant House
600 Shrewsbury Street, Charleston, WV 25301

**WV Traumatic Brain Injury (TBI) Waiver Program
Implementation through October 2012**

MNER Summary: Since February 1, 2012, APS Healthcare has received, processed and/or made initial determinations on twenty-nine (29) Medical Necessity Evaluation Request Forms (MNER)/applications.

- ❖ Of those twenty-nine (29) applications (submitted MNER):
 - 2 did not come from an approvable referral source
 - 2 legal representatives withdrew the application
 - 2 facilities withdrew the application
- **23 applicants received medical eligibility determination assessments**
 - 7 applicants did not meet medical eligibility
 - **16 applicants were considered medically eligible** based on their PAS and Rancho Los Amigos scores
 - 3 applicants were denied financial eligibility
 - 5 applicants are awaiting financial eligibility
 - 1 facility withdrew the application due to lack of home/community setting for the applicant
 - 1 applicant deceased prior to notification of medical eligibility
 - 1 applicant moved out of state
 - 5 applicants have been enrolled as members as of October 31, 2012

# MNER Applications Received Per Month for the WV TBI Waiver Program	
Month/Year	# MNER Received
February 2012	4
March 2012	1
April 2012	4
May 2012	4
June 2012	1
July 2012	2
August 2012	5
September 2012	7
October 2012	1
Total	29

Outreach efforts Summary: In January 2012, APS 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 the 315 email contacts indicated below).

Since March of 2012, APS Healthcare 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, APS offers/provides training and technical assistance to the thirty-four (34) enrolled provider agencies. Training topics include the Medicaid requirements for covered services (Case Management and Personal Attendant Services) and general information about supporting individuals with TBI.

APS 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, APS provides technical assistance to assist with specific member needs.

Types and Numbers of Outreach Efforts Made for the WV TBI Waiver Program	
Type of Outreach	# Outreach Efforts
General Outreach	
Email	*315
Phone	229
Face to face	179
Mail	48
Presentations/Outreach (ex. WV NASW Conference, local DHHR)	10
For Enrolled Providers	
Training (webinar)	9
Face-to-Face Technical Assistance	32
Phone Technical Assistance	12
Total	834

