

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 MARCH 14, 2016**

### MINUTES

**PRESENT:** David G. Sudbeck, Kyle Blackburn, Christopher Dodrill, Regina Mayne, Teresa Brown, Lydia Milnes, Karen Villanueva-Matkovich, Kelly Morgan, Victoria Jones, Monica Robinson and Sara Young

#### **I. COURT MONITOR REPORT**

David Sudbeck started the meeting by handing out an updated list of grievances filed with the Court Monitor's office. David Sudbeck mentioned there was only one new grievance filed in his office since the last meeting. The patient wanted to be reimbursed \$20.00 for a pair of shoes. The patient believed that since he was a patient at Sharpe Hospital, that he was considered indigent. David did not meet with the patient since it was clear that he had sufficient funds. The grievance was denied.

Kelly Morgan gave the American Medical Foundation update. She has submitted the Confidential Protective Order, and doesn't expect there to be any objections from Judge Bloom. Kelly Morgan mentioned that some of the patients being pulled for the audit have been discharged and one has passed away. The hospitals are currently working to obtain consents from those patients (approximately 18 total out of 43) who either had a drug or alcohol diagnosis or had some form of treatment. All efforts are being made to obtain consents, but if consent cannot be obtained Kelly would provide those names back to AMF to randomly select new patients within the same

DSM category. AMF will soon be provided training on accessing the patient records remotely. As such, AMF believes they can complete the audit without having to travel into the state, keeping the cost down and at a rate of \$350.00 per hour. A time frame for the audit to be complete has not yet been set.

David Sudbeck also asked about the Bateman Physician letter in which Craig Richards and Dr. Miller provided a response. Kelly Morgan advised that she had previously provided the responses. It was confirmed that Kelly Morgan had in fact emailed the responses on January 14, 2015 at 4:59 p.m. to all parties; however, Kelly Morgan forwarded it again to all parties.

## II. BHHF REPORT

Vickie Jones reported that she had no new information to report on. David asked Kelly Morgan to provide a summary of the issues recently resolved with Bill Albert regarding the LAWV hospital audits. Kelly advised that in preparing to conduct the LAWV hospital audits, which had not been completed in the past 2 years that LAWV questioned DHHR as to whether a community member was needed for the team. After several discussions, it was agreed that LAWV would determine the precise team members and comply with the Scope of Work outlined in the Grant. Upon information and belief, the Hospital audits were recently completed.

## III. PETITIONER'S REPORT

Lydia Milnes mentioned that they are still awaiting clarification on whether, and how, the retroactive pay increases have been implemented. Kelly Morgan stated that this issue has been addressed at the last status hearing, in the form of written discovery, during the last Party Meeting and with supplemental discovery responses. Monica Robinson and Vickie Jones reiterated that DHHR/BHHF complied with the June 2014 Order and all other orders. Lydia Milnes felt that this issue was not resolved and that Petitioners would review transcripts from 2014 hearings as well as discovery responses recently provided on this issue. The parties agreed to spot check several specific employee numbers so DHHR/BHHF could review

Lydia Milnes reiterated her request from last week for Petitioner's counsel to attend the meeting between DHHR and the comprehensives, as long as Bailey & Wyant was attending. Lydia stated that she had no objection to general counsel or counsel for AG attending, but if outside counsel specifically retained in this litigation was to attend, she felt it was only fair that she be permitted to attend. Kelly Morgan advised that DHHR was considering this issue and that a response would be timely provided. Later that same day, Kelly Morgan confirmed that Bailey & Wyant would not attend. As such, it was agreed that neither outside counsel will attend, as this is an internal meeting between DHHR/BHHF with the providers.

#### IV. BMS REPORT

Sara Young mentioned during the TBI Waiver Update that as of February 2016, there were 63 active members living at home in their community. 19 applicants were denied financial eligibility, 31 applications were closed due to no evidence of a TBI.

TBI waiver report copy attached below.

Next Meeting: To Be Determined  
One Davis Square  
Conference Room 134 Charleston, WV 25301

**WV Traumatic Brain Injury (TBI) Waiver Program  
Implementation through February 2016**

**MNER Summary:** Since February 1, 2012, the Utilization Management Contractor (UMC) has received, processed and/or made initial determinations on two hundred and seventy-two (272) Medical Necessity Evaluation Request Forms (MNER)/applications.

- ❖ Of those two hundred and seventy-two (272) applications (submitted MNER):
  - 31 applications were closed - no evidence of a TBI
  - 40 applications were withdrawn
  - 10 application pending assessment (Financial Eligibility-Pre-Medical Eligibility)
  - **191 applicants received medical eligibility determination assessments**
    - 40 applicants did not meet medical eligibility
    - 151 applicants were considered medically eligible based on their PAS and Rancho Los Amigos scores
      - 19 applicants were denied financial eligibility
      - 37 applicants withdrew their case after medical eligibility was determined
      - 3 applicants pending enrollment
      - 2 applicants deceased prior to notification of medical eligibility
      - 22 program participants have discontinued their enrollment since 2/2012
      - 5 program participants deceased
      - 63 Active program participants in February 2016

# MNER Applications Received									
Per Month									
2012	#MNER Received	2013	# MNER Received	2014	# MNER Received	2015	# MNER Received	2016	# MNER Received
Jan.	N/A	Jan	6	Jan.	9	Jan.	5	Jan.	4
Feb.	4	Feb	5	Feb.	6	Feb.	7	Feb.	8
March	2	March	10	March	4	March	5	March	
April	4	April	4	April	8	April	5	April	
May	3	May	9	May	9	May	3	May	
June	1	June	4	June	7	June	6	June	
July	2	July	10	July	6	July	7	July	
August	5	August	10	August	2	August	4	August	
Sept.	7	Sept	5	Sept.	7	Sept.	6	Sept.	
Oct.	1	Oct.	10	Oct.	8	Oct.	9	Oct.	
Nov.	3	Nov.	5	Nov.	4	Nov.	3	Nov.	
Dec.	2	Dec.	4	Dec.	6	Dec.	8	Dec.	
<b>2012 Total</b>	<b>34</b>	<b>2013 Total</b>	<b>82</b>	<b>2014 Total</b>	<b>76</b>	<b>2015 Total</b>	<b>68</b>	<b>2016 Total</b>	<b>12</b>
<b>Total since program implementation February 2012</b>								<b>272</b>	

**Outreach Efforts Summary:** In January 2012, the UMC 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 2249 Email contacts indicated below).

Since March of 2012, UMC 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 UMC offers/provides training and technical assistance to the sixteen (16) 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.

The UMC targets outreach for each agency selected to provide services for enrolled program participants. Outreach focuses on providing guidance in completing the financial eligibility-pre medical eligibility process and compliance with Medicaid forms. Additionally, the UMC provides technical assistance to resolve specific program participant needs.

Types and Numbers of Outreach Efforts Made for the WV TBI Waiver Program	
Type of Outreach	# Outreach Efforts
<b>General Outreach</b>	
Email	*2249
Phone	1274
Face-to-Face	529
Presentations/Outreach (ex. WV NASW Conference, local DHHR)	61
<b>For Enrolled Providers</b>	
Training-Webinar	44
Trainings-Face-to-Face	4
Face-to-Face Technical Assistance	75
Phone Technical Assistance	433
<b>Total</b>	<b>4669</b>





