Appealing a Level of Care Denial

The Arc®

Disclaimer

- I am NOT an attorney
  - NOT legal advice
  - Informational purposes only
- Recording and posting this session
  - Cannot address individual or personal details
  - Information will be universal
- Situation evolving
  - Automatically sending copies of LOC assessments with denial notices
  - More training for case managers
  - Looking for trends

Assessment

- Prepare ahead
  - Asking what they need help with and needing help is okay
  - Will take a long time
  - Some questions may be uncomfortable
- Answer based on what the individual can do INDEPENDENTLY and CONSISTENTLY
- CAN have others there and involved; guardians must be included
- Will have the answer as soon as the results submitted

Pending Denials

- When an individual is denied, a team from BDS reviews the decision
  - Review information
- Case manager currently cannot provide copy of assessment while pending
  - State working to change that
  - State will now automatically send copy of assessment when send formal denial notice
- Start gathering evidence immediately – DO NOT WAIT

Eligibility

- Health & Wellness/TBI criteria
  - Skilled nursing need OR
  - Substantial limitations in at least 3 Activities of Daily Living
- FSW/CIH criteria
  - 3 of 6
    - Mobility
    - Understanding/Use of Language
    - Self-Care
    - Self-Direction
    - Learning
    - Capacity for Independent Living

Review the Decision

- Health & Wellness/TBI
  - Letter does not explain why denied
  - MUST learn from assessment
  - Not obvious
  - Look at ADLs
- Family Supports/CIH
  - Obvious
  - Look at yes/no

Do You Disagree?

- If you disagree, APPEAL
  - DO NOT WAIT
    - Do NOT have to have everything ready when you submit the request
    - Include guardianship papers, POA, or Authorized Representative form
  - Have 33 days from the date of the letter to submit appeal request
  - Decision letter will have a form to fill out and send in
    - Can also send in own letter
    - Send where the letter tells you
    - For FSW/CIH, also send to Office of Administrative Law Proceedings
    - FSSA.Appeals@oalp.in.gov

Identify What You Disagree With

- Recognize the state's definitions may be different from your definition
- Consider eligibility criteria
  - Identify strongest area of disagreement
- Focus appeal efforts on the one or two areas of disagreement
  - Don't have to reprove everything

Gather evidence

- Documents
  - Letters from providers, teachers, therapists, doctors, etc.
  - Therapy, service notes
  - Incident Reports
- Witnesses
- Best evidence
  - Current (1 year or less) information
  - Third party information
  - Older information can still be valuable

Describe/Document Support Needs

- Be specific and detailed
- Think about what they can do independently, consistently, and in unfamiliar situations
  - Document the specific supports they need to complete tasks
  - Document how often they need supports
  - Document how long it takes to complete tasks

Notice of Telephone Hearing

- Appeal hearings default to telephone hearings
  - Can request in person; ALJ will decide
- Will list time, date, how to call in
- Will list how and when to submit evidence
  - Pay attention to deadline, usually 7 calendar days before the hearing
  - Pay attention to labeling requirements

CAN request a Continuance

- Submit request to Office of Administrative Law Proceedings
- Need to submit AT LEAST one week before hearing
- Need to have a reason
  - Need time to gather evidence, seek counsel
- Provide alternate timeframe or dates
  - Will need one month to gather documents
  - Individual has a sleep disorder and needs an afternoon time as an accommodation for their disability

Who Is Involved?

- Administrative Law Judge
- State's Representative
- ALL communication must involve the ALJ and state's representative
  - Email is fine
- Case manager cannot help
  - Can provide documents on request
- BDS cannot help

Prepare Appeal Packet

- Ensure case is clean, concise, and organized
  - Be professional
  - Focus on area of disagreement
  - Connect the dots for them
- Every page must be labeled
  - Lower right hand corner
  - Appellant’s Exhibit 1 page 1 of 3

Appeal Packet Layout

- Notice of Telephone Hearing (must be first)
- Table of Exhibits – list everything included in the packet
- Witness list (if any) with contact information
- Summary of Facts – just the facts
- Position Statement – you make your case about what the decision was wrong
- Denial letter
- Level of Care Assessment
- Supporting documents

Pre-Hearing Conference

- Can have a pre-hearing conference with the state's representative to see if sides can reach a settlement
  - Should request; when appeal, when submit evidence, at the hearing
- Supposed to get a copy of the state's exhibits at least 1 week before the hearing
  - Both side must have adequate time to review the other's evidence
  - If you do not get the state's exhibits, tell the ALJ
- If the sides cannot come to agreement, you will have the hearing
- If the sides DO come to agreement, get things in writing, and withdraw the appeal

Hearing – Roll of the ALJ

- Ensure hearing proceeds based on the rules of the court
- Independent
- Neutral third party
- Understand individuals and families do not engage in hearing often
  - Will explain things as needed

Hearing - Behavior

- Formal legal proceeding
- Be professional, respectful, polite, composed
  - Being emotional, argumentative, or hostile will hurt your case
- Wait your turn
- No “Gotcha!” moments

What Happens in the Hearing

- Before convening the hearing, the judge will ask who is on
- Send into “breakout room” for prehearing conference if it hasn’t occurred before
- Will ask if each side received the other’s evidence
  - If not, say so; will reschedule the hearing
  - If recently received with not enough time to review, say so, will likely reschedule
- Will begin the hearing
  - Recorded
  - Will have everyone identify themselves, spell names, and share role

State Goes First

- State will enter their exhibits
- Explain why the decision was made and why the denial is correct
- Listen and take notes
- When state done, you have opportunity to ask the state's rep questions
  - Do NOT argue
  - Ask clarifying questions on the evidence
  - Ask questions to lay the groundwork for YOUR case
  - BE RESPECTFUL

Your Turn

- Be clear, organized, and concise
- Focus on the area you need to flip
  - If need to flip more than one area, focus on one at a time
- Call witness if you have any
  - State gets to cross examine
- Introduce documents
- Build from the ground up and connect the dots for them

Closing statements

- Each side has opportunity to provide a closing statement
- Summary of why your side is right
- State goes first
- You go next
  - Summarize case quickly, concisely
  - Reiterate why the individual should qualify

Decision

- NO decision at the hearing
- Will receive a written decision in the mail
  - Often takes just over a month
  - Decision in first paragraph
  - Will then explain how the ALJ made their decision
    - Procedural History
    - Finding of Facts
    - Conclusions of Law
    - Decision and Order
    - Appeal Rights

Next Steps

- Either side can appeal
  - Agency review by DDARS
  - Document review - only looks at evidence submitted, nothing new
- If you win, waiver stays in place
- If you lose, would need to sue

Legal Representation

- Few lawyer practice this law
  - Want someone with Medicaid and waiver experience
- Pro bono attorneys
  - Indiana Legal Services
  - Indiana Disability Rights
  - Neighborhood Christian Legal Clinic

Transition Planning

- Once denied, case manager and service team MUST begin transition planning
  - Identifying services outside the waiver that may be helpful
- Cooperate
  - Does NOT hurt your appeal rights
  - May find additional supports that can be helpful – use them
- 90 days – ish
  - Not hard deadline
  - Will continue while appeal going forward (services also continue during appeal