

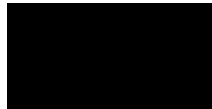


State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
4190 Washington Street West  
Charleston, WV 25313

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

January 22, 2007



Dear Mr. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 12, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce the homemakers hours due to a Level of Care determination.

In arriving at a decision, the State Hearings Officer 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.

Eligibility for the Aged and Disabled Waiver Services Program is based on current policy and regulations. Some of these regulations state as follows: Annual re-evaluations for medical necessity for each Waiver participant will be conducted. (Aged/Disabled Home and Community Based Services Manual § 580.2a RE-EVALUATIONS).

The information submitted at your hearing revealed: Your homemaker hours will be reduced from a "C" to a "B" level of care.

It is the decision of the State Hearings Officer to UPHOLD the PROPOSAL of the Department to determine your correct Level of Care.

Sincerely,

Ray B. Woods, Jr., M.L.S.  
State Hearing Officer  
Member, State Board of Review

cc: State Board of Review  
Ms. [REDACTED], RN – West Virginia Medical Institute  
Ms. Kay Ikerd, RN – Bureau of Senior Services  
Ms. [REDACTED], Case Manager - [REDACTED]

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

**Claimant,**

v.

**Action Number: 06-BOR-3270**

**West Virginia Department of  
Health and Human Resources,**

**Respondent,**

**DECISION OF THE STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 22, 2007 for Mr. [REDACTED]. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was scheduled for January 12, 2007 on a timely appeal filed December 13, 2006.

It should be noted that the Claimant is receiving benefits based on a "C" level of care. A pre-hearing conference was not held between the parties, and the Claimant did not have legal representation.

**II. PROGRAM PURPOSE:**

The Program entitled Aged and Disabled Waiver Services is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

Under Section 2176 of the Omnibus Budget Reconciliation Act of 1981, states were allowed to request a waiver from the Health Care Financing Administration (HCFA) so that they could use Medicaid (Title XIX) funds for home and community-based services. The program's target population is individuals who would otherwise be placed in an intermediate or skilled nursing facility (if not for the waiver services). Services offered under the Waiver Program will include: (1) chore, (2) homemaker and (3) case management services. West Virginia has been offering the Waiver Services Program since July, 1982 to those financially eligible individuals who have been determined to need ICF level care but who have chosen the Waiver Program Services as opposed to being institutionalized.

**III. PARTICIPANTS:**

[REDACTED] Claimant  
[REDACTED], Case Manager – [REDACTED]  
[REDACTED], Homemaker RN – [REDACTED]  
[REDACTED], Homemaker – [REDACTED]  
Kay Ikerd, RN – Bureau of Senior Services (BoSS)  
[REDACTED], RN – West Virginia Medical Institute (WVMI)

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

**IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided is: Should the Claimant’s Level of Care be reduced according to the Pre-Admission Screening (PAS) form dated October 10, 2006?

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community Based Services Manual Policy § 503.2.1 LEVELS OF CARE CRITERIA and; § 503.2.2 LEVELS OF CARE SERVICE LIMITS

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department’s Exhibits:**

- D-1 Aged/Disabled Home and Community Based Services Manual Policies
- D-2 PAS dated 10/10/06

**Claimants’ Exhibits:**

- C-1 Prescription dated 01/02/07

**VII. FINDINGS OF FACT:**

- 1) This issue involves a proposed reduction in homemaker hours due to a Level of Care Determination. The PAS dated October 10, 2006 (Exhibit D-2), indicates the Claimant’s homemaker hours should be reduced from a Level “C” (124 hours per month) to a Level “B” (93 hours per month). The assessment of the Claimant’s functional levels was based only on the day of the visit.
- 2) At the hearing, the BoSS RN explained the Level of Care Policy (Exhibit D-1), without questions from the participants.

- 3) The WVMi RN Reviewed the Pre-Admission Screening Form (PAS) assessed on October 10, 2006 (Exhibit D-2). The PAS had a total of seventeen (17) points.
- 4) The areas of dispute were with Question #23 (a) Angina Rest and (b) Angina Exertion.
- 5) The Case Manager and Homemaker RN referred to Claimant's Exhibit C-1 in support of two additional points to maintain the Claimant's current Level of Care.
- 6) Claimant's Exhibit C-1 was not written by his physician because he was on a family emergency. It was written by another physician from the office. It states:  
  
Patient on Toprol for CAD. He is S/P MI and has HTN.
- 7) The Case Manager and Homemaker RN testified that the medication referred to in Exhibit C-1 is for the Claimant's chest pain. The Claimant was previously prescribed nitro glycerin tablets for chest pain and now takes Toprol when necessary.
- 8) The BoSS RN and the WVMi RN both testified that the Claimant did not have a diagnosis for Angina in his record. The medication could also be used for other purposes.
- 9) The Homemaker RN could not show the State Hearing Officer that the Claimant's record reflects a prescription for Toprol to treat Angina.
- 10) The Claimant testified that he uses the Toprol whenever he has chest pains. He plans to contact his physician to obtain more nitro glycerin tablets.
- 11) Testimony from the BoSS RN revealed that the Claimant's case has been in hearing status prior to the October 10, 2006 PAS assessment. [REDACTED] had previously represented the Claimant.
- 12) The Case Manger testified that she did not believe [REDACTED] was necessary for the hearing.
- 13) The State Hearing Officer was satisfied with the response from the Case Manager.
- 14) **Aged/Disabled Home and Community Based Services Manual § 503.2.1 LEVELS OF CARE CRITERIA:**

There are four levels of care for homemaker services. Points will be determined as follows, based on the following sections of the PAS:

- #23 Medical Conditions/Symptoms - 1 point for each (can have total of 12 points) (must be based on medical evidence presented by appropriate medical professionals).
- #24 Decubitus – 1 point
- #25 1 point for b., c., or d.
- #26 Functional Abilities
  - Level 1 - 0 points
  - Level 2 - 1 point for each item a. through i.
  - Level 3 - 2 points for each item a. through m.; i (walking) must be equal to or greater than Level 3 before points given for j. Wheeling.
  - Level 4 - 1 point for a., 1 point for e., 1 point for f., 2 points for g. through m.
- #27 Professional and Technical Care Needs - 1 point for continuous oxygen
- #28 Medication Administration - 1 point for b. or c.
- #34 Dementia - 1 point if Alzheimer’s or other dementia
- #35 Prognosis - 1 point if Terminal

**Total number of points possible is 44.**

**15) Aged/Disabled Home and Community Based Services Manual § 503.2.2  
LEVELS OF CARE SERVICE LIMITS:**

<u>Level</u>	<u>Points Required</u>	<u>Hours Per Day</u>	<u>Hours Per Month</u>
Level A	5-9	2	62
Level B	10-17	3	93
Level C	18-25	4	124
Level D	26-44	5	155

**VIII. CONCLUSIONS OF LAW:**

- 1) The policy states 1 point is given for each Medical Condition/Symptom, but they must be based on medical evidence presented by appropriate medical professionals.
- 2) A Medical Professional did not state that the Claimant was taking the prescribed medication for the treatment of Angina.

**IX. DECISION:**

It is the decision of this State Hearing Officer to UPHOLD the PROPOSAL of the Department in this particular matter.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 22nd Day of January 22, 2007.**

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**Ray B. Woods, Jr., M.L.S.  
State Hearing Officer**