



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

June 21, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 6, 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. Kay Ikerd, RN – Bureau of Senior Services
Ms. [REDACTED] RN – West Virginia Medical Institute
Abode Health Care Services

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

_____,
Claimant,

v. **Action Number: 07-BOR-990**

**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 June 21, 2007 for Ms. _____. 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 June 6, 2007 on a timely appeal filed March 21, 2007.

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] Daughter/Homemaker – Abode Health Care Services*
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.

* Participated by conference call.

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 February 22, 2007?

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 02/22/07
- D-3 Re-evaluation Assessment – Approved dated 02/27/07
- D-4 Medical Necessity Evaluation Request dated 01/30/07

Claimants’ Exhibits:

None

VII. FINDINGS OF FACT:

- 1) This issue involves a proposed reduction in homemaker hours due to a Level of Care Determination.
- 2) The Medical Necessity Evaluation Request dated January 30, 2007 (Exhibit D-4) listed the Claimant’s diagnoses as Obstructive Chronic Bronchitis with Acute Exacerbation; Chronic Respiratory Failure; Obstructive Sleep Apnea; Morbid

Obesity; Hypertensive Heart Disease; Diabetes Mellitus with Neuropathy; Cellulitis with Abscess of Foot; Hyperalimentation; and Major Progressive Affective Disorder.

- 3) The PAS dated February 22, 2007 (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. The individuals participating in the assessment were the Claimant; her two Daughters; and the WVM RN.
- 4) The WVM RN issued a Re-evaluation Assessment – Approved dated February 27, 2007 (Exhibit D-3) to the Claimant. It stated in part: "The number of homemaker service hours approved is based on your medical needs, and cannot exceed 93 hours per month."
- 5) The Claimant requested a fair hearing to address the proposed reduction in homemaker services.
- 6) At the hearing, the BoSS RN explained the Level of Care Policy (Exhibit D-1), without questions from the participants. It should be noted that the Claimant was sent the wrong policy. The State Hearing Officer allowed the Claimant to submit written comments by June 16, 2007, if she had any questions about the policy. No comments were received as of the date of writing this decision.
- 7) The WVM RN reviewed the Pre-Admission Screening Form (PAS) assessed on February 22, 2007 (Exhibit D-2). The PAS had a total of fifteen (15) points. The WVM RN testified that the Claimant and Daughters agreed with the assessment.
- 8) The areas of dispute were with Question #23: (d) Arthritis; Question #26: (a) Eating; (f) Bowel Incontinence; and (i) Wheeling.
- 9) The Claimant's daughter testified that her mother has chronic arthritis. This was noted on the WVM RN's nurses' notes. The diagnosis of Chronic Arthritis was not listed on the referral from the Claimant's physician (Exhibit D-4). **No additional points will be awarded for Arthritis.**
- 10) The Claimant's daughter testified she must occasionally cut-up her mother's food when prepared. The WVM RN's notes state the Claimant and Daughter both agreed that the Claimant can feed herself and cut-up her own food/meats. **No additional points will be awarded for Eating.**
- 11) The Claimant testified that she sometimes has a bowel movement in her bed. This is noted in the WVM RN's nurses' notes. There was no diagnosis by the physician that the Claimant is Bowel Incontinent. **No additional points will be awarded for Bowel Incontinence.**

12) The Claimant's daughter testified that her mother has been bedfast for two years, and should receive points for having a wheelchair she cannot use. **This is not relevant testimony and additional points will not be awarded for Wheeling.**

13) **Aged/Disabled Home and Community Based Services Manual § 503.2.1
LEVELS OF CARE CRITERIA (Exhibit D-1):**

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.

14) **Aged/Disabled Home and Community Based Services Manual § 503.2.2
LEVELS OF CARE SERVICE LIMITS (Exhibit D-1):**

<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) The medical documentation and testimony from the Claimant's daughter and WVMi RN did not support the assignment of additional points.

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 21st Day of June, 2007.

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