



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
2699 Park Avenue, Suite 100  
Huntington, WV 25704

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

March 1, 2006

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\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 28, 2006. Your hearing request was based on the Department of Health and Human Resources' action to continue to impose a pharmacy lock-in on your Medicaid Program case.

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 Medicaid Program is based on current policy and regulations. Some of these regulations state as follows: if a Medicaid agency finds that a recipient has utilized Medicaid services at a frequency or amount that is not medically necessary, as determined in accordance with utilization guidelines established by the State, the agency may restrict that recipient for a reasonable period of time to obtain Medicaid services from designated providers only (Federal Medicaid Regulations Section 431.54 (e)).

The information which was submitted at your hearing revealed that your prescription use falls under the criteria for continuing a pharmacy lock-in to your Medicaid Program case.

It is the decision of the State Hearings Officer to uphold the action of the Department to continue to impose a pharmacy lock-in on your Medicaid Program case.

Sincerely,

Thomas M. Smith  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Vicki Cunningham, Bureau for Medical Services

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 05-BOR-7110**

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

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on February 28, 2006 for \_\_\_\_\_. 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 convened on February 28, 2006 on a timely appeal, filed December 8, 2005. It should be noted that the hearing was convened as a telephone conference hearing at claimant's request.

It should be noted here that the pharmacy lock-in has continued pending a hearing decision.

**II. PROGRAM PURPOSE:**

The Program entitled Medicaid is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources. The 1965 Amendments to the Social Security Act established, under Title XIX, a Federal-State medical assistance program commonly known as Medicaid. The Department of Health and Human Resources administers the Medicaid Program in West Virginia in accordance with Federal Regulations. The Bureau for Medical Services is responsible for development of regulations to implement Federal and State requirements for the program. The Department of Health and Human Resources processes claims for reimbursements to providers participating in the program.

**III. PARTICIPANTS:**

1. \_\_\_\_\_, Claimant.
2. Vicki Cunningham, Drug Utilization Review Coordinator.

Presiding at the Hearing was Thomas M. Smith, State Hearing Officer and a member of the State Board of Review.

#### **IV. QUESTIONS TO BE DECIDED:**

The question to be decided is whether the Department took the correct action to continue to impose a pharmacy lock-in to the claimant's Medicaid case.

#### **V. APPLICABLE POLICY:**

Federal Medicaid Regulations Section 431.54 (e).  
Criteria for Lock-In Continuation from Retrospective Drug Utilization Review Committee 8-22-03.

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

##### **Department's Exhibits:**

- D-1 Copy of original notification of lock-in status 3-13-01 (2 pages)
- D-2 Copy of continued lock-in status 11-14-05 (2 pages).
- D-3 Copy of Federal Medicaid Regulations Section 431.54 (e) and criteria for lock-in continuation.

##### **Claimant's Exhibits:**

None.

#### **VII. FINDINGS OF FACT:**

- 1) The Drug Utilization Review Committee placed the claimant on pharmacy lock-in to one (1) pharmacy for Medicaid prescriptions after determining that the claimant's prescription record met the criteria for lock-in and the claimant was notified of the action on 3-13-01 (Exhibit #D-1).
- 2) In September, 2005, the claimant's case was reviewed and it was determined that she had received prescriptions for four (4) controlled substances during the previous six (6) month period from two (2) different prescribers and that the pharmacy lock-in should continue and the claimant was notified of the continuation on 11-14-05 (Exhibit #D-2).
- 3) The claimant requested a hearing on the continuation of the pharmacy lock-in for Medicaid on 12-8-05 by telephone conference.
- 4) Ms. Cunningham testified that the claimant received prescriptions for Hydrocodone, Sonata, Generic Fiorinal, and Alprazolam and that all four (4) are controlled substances prescribed by two (2) different prescribers.

- 5) The claimant testified that everything Ms. Cunningham stated was true and that she would probably continue with her current pharmacy but that sometimes she needs medication and the pharmacy is closed and that it causes an inconvenience. The claimant testified that one time she had to do without her blood pressure medicine because the pharmacy was closed.
- 6) Ms. Cunningham testified that an override can be requested by another pharmacy in the situation the claimant described but not for controlled substances unless it is an emergency.
- 7) Federal Medicaid Regulations in Section 431.34 (e) state that if a Medicaid Agency finds that a recipient has utilized Medicaid services at a frequency or amount that is not medically necessary, as determined in accordance with utilization guidelines established by the state, the agency may restrict that recipient for a reasonable period of time to obtain Medicaid services from designated providers only. The agency may impose these restrictions only if the following conditions are met:
  - (1) The agency gives the recipient notice and opportunity for a hearing (in accordance with procedures established by the agency) before imposing the restriction.
  - (2) The agency ensures that the recipient has reasonable access (taking into account geographic location and reasonable travel time) to Medicaid services of adequate quality.
  - (3) The restrictions do not apply to emergency services furnished to the recipient.
- 8) Criteria for Lock-In Continuation from the Retrospective Drug Utilization Review Committee states:
  1. Profiles of recipients who have been locked in to one pharmacy for prescription services shall be reviewed every twelve months.
  2. Lock-in status may be continued if the recipient is still receiving or has received prescriptions for more than one opiate and/or 3 or more controlled substances within the past six months.
  3. Lock-in status may be continued if there is a documented history of controlled substance abuse within the past 12 months.
  4. Lock-in may be continued if the patient has prescriptions for controlled substances from more than one prescriber in the past 12 months.

### **VIII. CONCLUSIONS OF LAW:**

- 1) Federal Medicaid regulations in Section 431.54 (e) provide for the Medicaid agency (the DHHR) to restrict a recipient of Medicaid services to obtaining services from one (1) designated provider as long as the recipient has been provided with proper notice including the right to a hearing before the action is taken, has reasonable access, and the restriction does not apply to emergency services. The claimant in this case was notified

in writing on 3-31-01 of the proposal to impose a pharmacy lock-in and was informed of her right to a hearing before the action was taken. The claimant has reasonable access to the service and the service did not entail emergency services.

- 2) Criteria for Lock-in Continuation from the Retrospective Drug Utilization Review Committee dated 8-22-03 states that profiles of recipients who have been locked in to one pharmacy for prescription services shall be reviewed every twelve months, that the lock-in status may be continued if the recipient is still receiving or has received prescriptions for more than one opiate and/or 3 or more controlled substances within the past six months, may be continued if there is a documented history of controlled substance abuse within the past 12 months, and may be continued if the patient has prescriptions for controlled substances from more than one prescriber in the past 12 months. The claimant has received 3 or more controlled substances within the past six months and has received prescriptions for controlled substances from more than one prescriber. The policy clearly allowed the Department to continue to impose a pharmacy lock-in.

**IX. DECISION:**

It is the decision of the State Hearing Officer that the Department took the correct action to continue to impose a pharmacy lock-in to the claimant's Medicaid Program case.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 1st Day of March, 2006.**

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**Thomas M. Smith  
State Hearing Officer**