STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
Board of Review
4190 West Washington Street
Charleston, West Virginia 25313
Email: raywoods@wvdhhr.org

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

June 9, 2005

Dear Ms._____;

Attached is a copy of the findings of fact and conclusions of law on the hearing held April 29, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker 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 Home and Community Based Services Program is based on current policy and regulations. Some of these regulations state as follows:

Complete nursing reassessment and update POC every six months; this must be a face-to-face assessment. Exception: More frequent assessments may be required if the client's needs or medical conditions change; documentation must substantiate the need for additional assessments. (WV Provider Manual Chapter 520.3 (C) *MONTHLY RN SERVICES).*

The information submitted at your hearing revealed: Your medical evaluation indicates your level of care should be reduced from Level "D" to Level "C".

It is the decision of the State Hearings Officer to UPHOLD the proposal of the Agency to determine Ms. _____'s correct Level of Care.

Sincerely,

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

Cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, RN – BoSS
[redacted] Case Manager – All Care Home/Community Services
Oretta Keeney, RN - WVMI

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

SUMMARY AND 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 9, 2005 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 April 29, 2005, on a timely appeal filed March 8, 2005.

It should be noted here that Ms. _____is currently receiving Home and Community Based Services at a "D" Level of Care.

A pre-hearing conference was not held between the parties and, Ms. _____ did not have legal representation in this particular matter.

All parties agreed to provide truthful information during the hearing

II. PROGRAM PURPOSE:

The program entitled Home and Community Based Services, is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

Under Section 2176 of the Omnibus Budget Reconciliation Act of 1981, states were allowed to request 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). .

III. PARTICIPANTS:

_____, Claimant
_____, Daughter
_____, Daughter-in-Law
[redacted] Case Manager – All Care Home/Community Services
Kay Ikerd, RN – Bureau of Senior Services (BoSS) (Provided testimony by conference call)
Judy Bolen, RN – West Virginia Medical Institute (WVMI) (Provided testimony by conference call)

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:

Does Ms. _____ meet the medical eligibility for her current Level of Care under the Home and Community Based Services Program?

V. APPLICABLE POLICY:

WV Provider Manuals Chapters 520.3 (F) MONTHLY RN SERVICES; 570.1.c LEVELS OF CARE CRITERIA; 570.1.d LEVELS OF CARE SERVICE LIMITS; 580.2 MEDICAL ELIGIBILITY REEVALUATION; 580.2.b ANNUAL REEVALUATIONS

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department' Exhibits:

D-1 WV Provider Manuals Chapters 520.3 (F) MONTHLY RN SERVICES; 570.1.c LEVELS OF CARE CRITERIA; 570.1.d LEVELS OF CARE SERVICE LIMITS; 580.2 MEDICAL ELIGIBILITY REEVALUATION; 580.2.b ANNUAL REEVALUATIONS
D-2 PAS-2000 dated 10/18/04
D-3 Notice of Decision dated 01/25/05
D-4 Medical Necessity Reevaluation Request dated 09/10/04
D-5 Memorandum dated 02/28/05 from BoSS to Ms. [redacted] re: Hearing Exhibits
D-6 Scheduling Notice dated 03/11/05
D-7 Request for Hearing dated 01/31/05
D-8 GroupWise Messages re: Scheduling

Claimant's Exhibits:
None

VII. FINDINGS OF FACT:

1) Ms. Ikerd reviewed the policy found in the WV Provider Manual Chapters 520.3 (F) MONTHLY RN SERVICES; 570.1.c LEVELS OF CARE CRITERIA; 570.1.d LEVELS OF CARE SERVICE LIMITS; 580.2 MEDICAL ELIGIBILITY REEVALUATION and; 580.2.b ANNUAL REEVALUATIONS

2) WVMI is the Peer Review Organization (PRO) chosen by the Bureau of Senior

Services, to review the PAS-2000 and determine Level of Care in the Aged/Disabled Waiver Program.

3) Mrs. Bolen reviewed Ms._____'s PAS-2000 assessed on October 18, 2004 in the following manner:

Question #23
(a) Angina Rest; (b) Angina Exertion; (d) Significant Arthritis; (f) Dysphagia; (h) Pain; (i) Diabetes; (k) Mental Disorder; (l) Other (Anxiety) **Total = 8**

Question #24
Decubitus - No----------**Total = 0**

Question #25
In the event of an emergency, the individual can vacate the building, (d) Physically Unable. **Total = 1**

Question #26:

a. Eating - 2	Total = 1	
b. Bathing - 2	Total = 1	
c. Dressing – 2	Total = 1	
d. Grooming -3	Total = 2	
e. Cont/Bladder - 3	Total = 2	
f. Cont/Bowel - 2	Total = 1	
g. Orientation - 1	Total = 0	
h. Transferring – 2	Total = 1	
i. Walking - 3	Total = 2	
j. Wheeling - 1	Total = 0	
k. Vision - 2	Total = 0	
l. Hearing - 2	Total = 0	
m. Communication – 1	Total = 0	**Total = 11**

Question #27
Professional and Technical Care Needs: **Total = 0**

Question #28
The individual is capable of administering his/her own medications: No. **Total = 1**

Question # 34:
Alzheimer's, multi-farct, senile dementia, or related condition: Yes **Total = 1**

Question #35:
Prognosis: Deteriorating **Total = 0**

4) The total number of points from Ms._____'s PAS-2000 = 22 points or Level C (4 hours per day or 124 hours per month).

5) A Medical Necessity Reevaluation Request was completed by the All Care Home/Community Services on September 10, 2004.

6) The WVMI issued a NOTICE OF DECISION Re-evaluation Assessment – Approved, on January 25, 2005. It stated in part, "The number of homemaker service hours approved is based on your medical needs, and cannot exceed 124 hours per month."

7) The Bureau of Senior Services issued a Memorandum on February 28, 2005 to Ms. _____. The Department's hearing exhibits were attached to the Memorandum.

8) Mrs. _____ questioned the Deteriorating Prognosis since Ms. _____ has been diagnosed with Cancer. Mrs. Bolen testified that she called Ms. _____'s physician who confirmed that the Melanoma was a Terminal Condition. Ms. Bolen referred to the statements under the Health Assessment. It states in part, "(The) client could expire from any of her other medical conditions, before doing so from the skin cancer." Ms. Ikerd stated that according to her experience with Hospice Care, a terminal diagnosis is generally defined as six (6) months.

9) According to Mrs._____, Ms. _____ had one of her better days at the time of the assessment. Ms.[redacted]is usually short of breath. According to Ms. Bolen, Ms. _____ was not short of breathe at the time of the assessment and. had a respiration rate of 20.

10) The State Hearing Officer rendered a decision at the conclusion of the hearing.

VIII. CONCLUSIONS OF LAW:

1) WV Provider Manual Chapter 520.3 *MONTHLY RN SERVICES*: Functions that are billable include:

A. Attend other meetings in addition to the initial assessment and SCP meeting.

B. Make a home visit with the client and HM within 30 days after HM services begin.

C. Complete nursing reassessment and update POC every six months; this must be a face-to-face assessment. Exception: More frequent assessments may be required if the client's needs or medical conditions change; documentation must substantiate the need for additional assessments. RN Assessment (Attachment 9) or Client Contact Form/Recording Log (see Attachments 6 and 7 for samples) may be used as condition warrants.

D. Review and sign the HM worksheets (Attachment 10) to assure services were provided as described in the POC and that client's initials and signature are appropriate.

E. Upon notification that a client has been discharged from an acute care hospital, NF, or other residential setting, complete a nursing reassessment to determine the need for changes in the POC and notify the CMA if additional services or changes in services are needed

F. Compile, prepare, and submit material to the QIO that can be used to assess an ADW client's need for additional HM hours. Additional hours can only be requested for clients at Level of Care A, B, or C. In order to determine whether additional hours are warranted, a completed Prior Authorization Request for Additional Homemaker Hours Form (Attachment 11) must be submitted to the QIO, including clinical documentation sufficient to support the request. Once the request and supporting information is received, the QIO field nurse will arrange within five working days a visit with the client in order to complete a new PAS. A LOC determination will then be established by the QIO. This request may or may not result in a change in the LOC. Notice of this determination will be sent to the client and the HMA. The HMA must notify the appropriate CMA (or client/client representative in the case of Consumer-Directed Case Management) of the results of this process.

G. Be available to the homemaker for consultation and assistance at any time when the homemaker is providing services.

2) WV Provider Manual Chapter 570.1c *LEVELS OF CARE CRITERIA*:

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

#23 - 1 point for each (can have total of 12 points)
#24 - 1 point
#25 - 1 point for B, C, or D
#26 - Level I - 0 points
Level II - 1 point for each item A through I
Level III - 2 points for each item A through M; I (walking) must be equal to or greater than Level III before points given for J (wheeling)
Level IV - 1 point for A, 1 point for E, 1 point for F, 2 points for G through M
#27 - 1 point for continuous oxygen
#28 - 1 point for level B or C
#34 - 1 point if Alzheimer's or other dementia
#35 - 1 point if terminal
Total number of points possible is 44.

3) WV Provider Manual Chapter 570.1.d *LEVELS OF CARE SERVICE LIMITS*:

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

The total number of hours may be used flexibly within the month, but must be justified and documented on the POC. Example: If the POC shows 4 hours/day, Monday -Thursday and 5 hours on Friday, the additional hour on Friday must be justified on POC.

4) WV Provider Manual Chapter 580.2 *MEDICAL ELIGIBILITY REEVALUATION*:

A medical eligibility reevaluation may include either a periodic or annual reevaluation. The purpose of either of these reevaluations is to confirm and validate an individual's continued medical eligibility for ADW services and to establish whether there is any change in the LOC the individual requires. The client and CMA will be notified of the decision of both periodic and annual reevaluations. The client will receive information describing due process rights should he/she dispute the medical eligibility determination.

5) WV Provider Manual Chapter 580.2.b *ANNUAL REEVALUATIONS*:

In the event the field nurse determines that a periodic reevaluation is not necessary, the client will be scheduled for an annual reevaluation. All clients must be evaluated at least annually in order to confirm their medical eligibility for continued services and to establish the LOC they require. The reevaluation process is initiated by the CM agency completing and submitting a Medical Necessity Reevaluation Request (Attachment 18). The request can be submitted two months prior to the annual date. However, to avoid disruption of waiver services, it must be received by the QIO at least 15 days prior to expiration of the current approved period to allow processing time.

IX. DECISION:

The WV Provider Manual Chapter 520.3 *(C) MONTHLY RN SERVICES*: Functions that are billable states in part:

"Complete nursing reassessment and update POC every six months; this must be a face-to-face assessment. Exception: More frequent assessments may be required if the client's needs or medical conditions change; documentation must substantiate the need for additional assessments..."

The PAS assessed on October 18, 2004 was approved for a Level "C" Care. Ms. _____ is

currently receiving Level “D” Care during the fair hearing process. Based upon the testimony and medical documentation presented during the fair hearing, Ms _____’s Level of Care must be decreased.

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