



**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

July 17, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 16, 2006. 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 have been 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
_____, RN – West Virginia Medical Institute
Ms. Kay Ikerd, RN – Bureau of Senior Services
_____, LSW – First Care Services

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

_____,

Claimant,

v.

Action Number: 06-BOR-1325

**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 July 17, 2006 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 16, 2006 on a timely appeal filed March 1, 2006.

It should be noted here that the Case Management Agency reduced the Claimant's benefits from a "C" to a "B" level of care. This was done because the hearing request was not received in a timely manner. A pre-hearing conference was not held between the parties, and Ms. _____ 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:

_____, Claimant
_____, Licensed Social Worker/Case Manager – First Care Services
_____, Homemaker – Pro Careers
Kay Ikerd, RN – Bureau of Senior Services (BoSS)*
_____, RN – West Virginia Medical Institute (WVMI)*
*Participated by telephone conference

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 _____'s Level of Care be reduced according to the Pre-Admission Screening (PAS) form dated December 19, 2005?

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual Policy § 503 SERVICE OPTIONS LIMITATIONS; § 570.1.c LEVELS OF CARE CRITERIA; § 570.1.d LEVELS OF CARE SERVICE LIMITS; and § 580.2a RE-EVALUATIONS

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community Based Services Manual Policies
- D-2 PAS dated 12/19/05 with Attached Release of Information
- D-3 Notice of Decision dated 12/28/05
- D-4 Request for Hearing received by Bureau for Medical Services dated 03/01/06
- D-5 Miscellaneous Hearing Documents

Claimants' Exhibits:

- C-1 Letter from Ms. _____'s physician _____, M.D., dated 03/07/06
- C-2 Pharmacy Receipts
- C-3 Physician's Desk Reference – Tenormin (Atenolol)

VII. FINDINGS OF FACT:

- 1) This issue involves a proposed reduction in homemaker hours due to a Level of Care Determination. The PAS dated December 1, 2005 indicates _____'s

homemaker hours should be reduced from a Level "C" (124 hours per month) to a Level "B" (93 hours per month). According to Ms. [REDACTED], the PAS was completed on December 19th rather than the 1st. There were no objections to the correction. Those present during the assessment were Ms. [REDACTED], LSW; Ms. [REDACTED] Daughter; and Ms. [REDACTED], RN.

The Department issued a Notice of Decision (Exhibit D-3) to _____ on December 28, 2005. The letter stated in part, "The number of homemaker service hours approved is based on your medical needs, and cannot exceed 93 hours per month." Ms. _____ requested a fair hearing. The request was received by the Bureau for Medical Services on March 1, 2006 (Exhibit D- 4).

2) Ms. Kay Ikerd, RN reviewed the Level of Care policy (Exhibit D-1). There were no questions for Ms. Ikerd.

3) Ms. [REDACTED], RN reviewed the Pre-Admission Screening (PAS) form dated December 19, 2005 (Exhibit D-2). There were no questions for Ms. [REDACTED].

4) The areas of dispute were with Questions #23 (a) Angina Rest; (b) Angina Exertion and; (c) Dyspnea.

5) The testimony supports one (1) additional point each in the areas of Angina Rest and Angina Exertion. Ms. _____ provided verification from her physician that she is taking Atenolol for treatment of Hypertension and Heart Condition (Exhibit C-1). The Pharmacy Receipts indicate Ms. _____ has been taking Atenolol since November 8, 2005 (Exhibit C-2). Finally, the PDR states that Atenolol is for the treatment of Angina (Exhibit C-3). Ms. Ikerd and Ms. [REDACTED] did not dispute the use of the medication. According to the testimony of Ms. [REDACTED] there was no diagnosis of Dyspnea in the case record. This is credible testimony and no points will be awarded. The additional points will increase the overall number from 15 to 17. Ms. _____ will remain at a "B" Level of Care.

**6) Aged/Disabled Home and Community Based Services Manual § 503
SERVICE OPTIONS LIMITATIONS:**

Medical Adult Day Care is an optional service. Case Management is also an optional service, as a client may choose Consumer-Directed Case Management instead. Homemaker is not an optional service. A client in the ADW Program must receive homemaker services to remain eligible for the program. Homemaker services are limited to a maximum number of hours that are determined by the client's Level of Care (LOC). The notification of medical eligibility from the Quality Improvement Organization (QIO) will specify the maximum hours of service a client may receive in a month. If it is believed that the client's LOC has changed, the Homemaker RN submits a request for a change of level of care to Bureau for Medical Services.

**7) Aged/Disabled Home and Community Based Services Manual § 570.1.c
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 2005:

- #23 1 point for each (can have total of 12 points) Medical Condition
- #24 1 point Decubitus
- #25 Levels 1 - 0 points Functional levels
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
- #26 1 point for continuous oxygen
- #27 1 point for "No" answer – medication administration
- #33 1 point if Alzheimer's or other dementia
- #34 1 point if terminal

Total number of points possible is 44.

**8) Aged/Disabled Home and Community Based Services Manual § 570.1.d
LEVELS OF CARE SERVICE LIMITS:**

Level A	5-9 points	62 Hours Per Month
Level B	10-17 points	93 Hours Per Month
Level C	18-25 points	124 Hours Per Month
Level D	26-44 points	155 Hours Per Month

9) Aged/Disabled Home and Community Based Services Manual § 580.2a RE-EVALUATIONS states in part:

Annual re-evaluations for medical necessity for each Waiver participant will be conducted.

VIII. CONCLUSIONS OF LAW:

1) Aged/Disabled Home and Community Based Services Manual § 580.2a RE-EVALUATIONS states in part:

Annual re-evaluations for medical necessity for each Waiver participant will be conducted.

**2) Aged/Disabled Home and Community Based Services Manual § 570.1.c
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 2005:

- #23 1 point for each (can have total of 12 points) Medical Condition
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- #26 1 point for continuous oxygen
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Total number of points possible is 44.

**3) Aged/Disabled Home and Community Based Services Manual § 570.1.d
 LEVELS OF CARE SERVICE LIMITS:**

Level A	5-9 points	62 Hours Per Month
Level B	10-17 points	93 Hours Per Month
Level C	18-25 points	124 Hours Per Month
Level D	26-44 points	155 Hours Per Month

4) One (1) additional point was each awarded for Angina Rest and Angina Exertion. The additional points will increase the overall number from 15 to 17. Ms. _____ will remain at a "B" Level of Care.

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 17th Day of July 2006.

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