



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

August 13, 2007

Mr. _____

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 9, 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 "D" to a "C" 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
Abode Health Care Services

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

_____,

Claimant,

v.

Action Number: 07-BOR-1199

**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 August 13, 2007 for Mr. _____. 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 August 9, 2007 on a timely appeal filed April 24, 2007.

It should be noted that the Claimant is receiving benefits based on a "D" 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], Mother/Homemaker
[REDACTED], RN – 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 April 4, 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 04/04/07
- D-3 Re-evaluation Assessment – Approved dated 04/12/07
- D-4 Medical Necessity Evaluation Request dated 03/06/07

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 March 6, 2007 (Exhibit D-4) listed the Claimant's diagnoses as Fredrich's Ataxia; Scoliosis; and Depression.

- 3) The PAS dated April 10, 2007 (Exhibit D-2), indicates the Claimant's homemaker hours should be reduced from a Level "D" (155 hours per month) to a Level "C" (124 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 and WVM RN.
- 4) The WVM issued a Re-evaluation Assessment – Approved dated April 12, 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 124 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.
- 7) The WVM RN reviewed the Pre-Admission Screening Form (PAS) assessed on April 4, 2007 (Exhibit D-2). The WVM RN testified that the Claimant agreed with the assessment.
- 8) The Claimant's Mother/Homemaker disputed three functional levels listed under Question #26: (a) Eating; (c) Dressing; and (f) Bowel Incontinence. According to the Mother/Homemaker, the Claimant requires total assistance at Level 3 for Eating and Dressing, rather than Physical Assistance at Level 2. Also, Bowel should be listed as Incontinent at Level 3, rather than Occasional Incontinence at Level 2.
- 9) The Mother/Homemaker testified she was in the home during the assessment, but did not participate
- 10) The Physician did not address any of the disputed areas on the Medical Necessity Evaluation Request dated March 6, 2007.
- 11) No additional points will be awarded for the disputed areas.
- 12) **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.

**13) 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 Necessity Evaluation Request dated and signed by the physician on March 6, 2007 did not support 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 13th Day of August, 2007.

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