



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 3, 2007

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

Dear \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 26, 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  
CWVAS, Inc. - Charleston

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

\_\_\_\_\_,  
**Claimant,**

**v.**

**Action Number: 07-BOR-1269**

**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 3, 2007 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 scheduled for June 26, 2007 on a timely appeal filed May 3, 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:**

\_\_\_\_\_, Claimant's Spouse\*  
\_\_\_\_\_, Caregiver – Kelly Home Health Care\*  
\_\_\_\_\_, Case Manager – Central West Virginia Aging Services, Inc. (CWVAS)  
Kay Ikerd, RN – Bureau of Senior Services (BoSS)  
\_\_\_\_\_, 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 16, 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 04/16/07
- D-3 Re-evaluation Assessment – Approved dated 04/24/07
- D-4 Medical Necessity Evaluation Request dated 03/08/07

#### **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 8, 2007 (Exhibit D-4) listed the Claimant's diagnoses as Hypertension; Elevated Lipids; CVA with left

sided weakness; Obesity; Diabetes Mellitus Type II – Uncontrolled; Depression; Frequent decubitus; History of right elbow fracture; and Urinary Incontinence.

- 3) The PAS dated April 16, 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; her Caregiver; Case Manager; Case Management RN; and the WVMI RN.
- 4) The WVMI issued a Re-evaluation Assessment – Approved dated April 24, 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 WVMI RN reviewed the Pre-Admission Screening Form (PAS) assessed on April 16, 2007 (Exhibit D-2). The RN testified that she received additional documentation from the Claimant's physician on April 30, 2007. The assessment was adjusted to reflect additional diagnoses of Osteoarthritis and Contractures. The Claimant received a total of 25 points and a decrease to Level "C".
- 8) The areas of dispute were with Question #26: (g) Orientation and (j) Wheeling.
- 9) The Claimant's Caregiver and Husband testified that the Claimant is not oriented all the time. This is attributed to her medical conditions. The WVMI RN's notes reflect that the Claimant was able to tell the month and year. She had to refer to a calendar for the day of the week.
- 10) The Claimant's Caregiver and Husband testified that the Claimant has difficulty using her wheelchair. There was no documentation provided at the hearing.
- 11) According to the WVMI RN's notes of April 16, 2007, the Claimant's Caregiver and Case Manager who also participated in the hearing did not object to the final assessment.
- 12) No additional points will be awarded for the disputed areas.
- 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 testimony from the Claimant's Husband; Caregiver; and the 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 3<sup>rd</sup> Day of July, 2007.**

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