

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

<p>██████████ Petitioner,</p> <p>v.</p> <p>DEPARTMENT OF COMMUNITY HEALTH,</p> <p>Respondent.</p> <hr/>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>DOCKET NO.: OSAH-██████████</p> <p>██████████-Walker-Russell</p> <p>Agency Reference No.: ██████████</p>
---	---	---

Appearances: For Petitioner: Cole Thaler, Esq.  
For Respondent: Elizabeth Brooks, Esq.

**INITIAL DECISION**

Petitioner appeals Respondent’s decision to terminate her services under the Service Options Using Resources in Community Environments (“SOURCE”) Medicaid Program because Petitioner does not meet the Level of Care Criteria (LOC) for eligibility. The hearing was held on March 18, 2013.<sup>1</sup> Upon hearing the testimony, reviewing all of the documentary evidence received, and for the reasons stated herein, Respondent’s decision to terminate Petitioner’s services under the SOURCE Program is **HEREBY REVERSED**.

**I. OVERVIEW OF SOURCE PROGRAM**

SOURCE is a component of Georgia’s Home and Community-Based Services (HCBS) Waiver). Section 1915(c) of the Social Security Act authorizes the HCBS waiver and allows Georgia to provide home and community-based waiver services to individuals who, but for the provision of such services, would require the level of care provided by a nursing facility.<sup>2</sup> Individuals served by this waiver must meet the same level of care that is required for admission to a nursing facility. (Respondent’s Exhibit 1, §701, Page VII-1). Participants of SOURCE are evaluated for continued eligibility at least annually, and more often as necessary. Reevaluations are completed by a Licensed Practical Nurse (LPN), who is currently licensed in Georgia, and approved by a supervising Registered Nurse (RN) to confirm that the member

<sup>1</sup> The record was held open until March 27, 2013, for the parties to submit Proposed Findings of Facts and Conclusions of Law.

<sup>2</sup> “Nursing facility” and “nursing facility services” are defined at 42 CFR §§440.40 and 440.155.

continues to require "Intermediate Level of Care for Nursing Home Placement", generally called nursing home level of care, to meet the criteria for SOURCE eligibility. (Respondent's Exhibit 1, §904, Page IX-9).

## II. FINDINGS OF FACT:

The undersigned has considered the entire evidence in this case and, based upon a preponderance of the credible evidence, makes the following specific findings of fact:

1.

Petitioner, [REDACTED], is a fifty three (53) year old female (DOB 02/06/60) currently enrolled as a member of the Georgia Department of Community Health's SOURCE Program since February 6, 2009. Petitioner receives Personal Care Home services from the SOURCE Program. (Testimonies of Minnie Simmons and [REDACTED]; Respondent's Exhibit 5).

2.

Petitioner's diagnosis includes schizophrenia, depression, osteoarthritis, hypertension, gastro-esophageal reflux disease (GERD), hypothyroidism, insomnia and constipation. (*Respondent's Exhibit 5* at page S-5; *Respondent's Exhibit 8*; *Petitioner's Exhibits 2, 3, and 4: Testimony of Minnie Simmons*). On August 4, 2012, Petitioner was seen at [REDACTED] where she was diagnosed with tachycardia and referred to a cardiologist due to her increased or irregular heart rate. (*Petitioner's Exhibit 2*). On September 13, 2012, Petitioner was seen for a cardiology consult at Georgia Clinic. These records indicate that, on the prior day, Petitioner felt dizziness and fell down on the floor. (*Petitioner's Exhibit 3*). On November 9, 2012, Petitioner saw her primary care physician, Dr. Kaushik Amin, whose records reflect the tachycardia diagnosis. (*Petitioner's Exhibit 4*).

3.

The SOURCE manual requires Respondent to perform a formal re-evaluation for all SOURCE members annually at a minimum. As part of the re-evaluation, the member's Case Manager must "review...any issues jeopardizing the health or functional status of the member..." (*Respondent's Exhibit 1, Section 1302(d) at page XIII-11*).

4.

On November 26, 2012, Respondent conducted an annual physical and mental reassessment of Petitioner to determine her continued eligibility to participate in the SOURCE Program and was subsequently deemed ineligible for SOURCE because she does not meet the Level of Care (LOC) criteria. (*Respondent's Exhibit 1, Section 1302(d) at page XIII-11; Testimony of Minnie Simmons*). Licensed Practical Nurse (LPN), Minnie Simmons, visited Petitioner's Personal Care Home to evaluate her level of care needs to determine her continued eligibility for SOURCE services. At the time of the reassessment, Petitioner had been living in the Personal Care Home for two (2) weeks. Nurse Simmons completed an MDS-HC form in conducting the reassessment. Upon completion of the reevaluation, Ms. Simmons submitted it to Registered Nurse, Sandra Odom, for approval.<sup>3</sup> (*Testimonies of Minnie Simmons and Respondent's Exhibit 6*).

---

<sup>3</sup> Sandra Odom no longer works for Respondent and did not testify at the hearing.

5.

At the time of the reassessment, Respondent was not aware of Petitioner's tachycardia diagnosis, that Petitioner had become dizzy and fallen down, and that a cardiologist had administered a myocardial perfusion imaging test to Petitioner on September 13, 2012. (*Testimony of Minnie Simmons; Respondent's Exhibit 5*).

#### Petitioner's Performance on Stairs

6.

Based on the information gathered from Petitioner and the Personal Care Home caregiver during the reassessment, Nurse Simmons found that Petitioner's performance on stairs involves "total dependence (full performance by others during entire period)." Nurse Simmons found that Petitioner's capacity for stairs requires "maximal assistance (help throughout task, but performs less than 50% of task on own)." (*Respondent's Exhibit 5, at Page S-4*). Petitioner's Personal Care Home has steps leading up to its front door. (*Testimony of Minnie Simmons*). Nurse Simmons testified that she did not recall seeing a wheelchair ramp at Petitioner's Personal Care Home. (*Testimony of Minnie Simmons*).<sup>4</sup>

#### Bathing and Personal Hygiene

7.

Petitioner requires "supervision (oversight/cueing)" for bathing and personal hygiene. Petitioner must be supervised with bathing, requires assistance with dressing of lower extremities, and needs bathing equipment in the form of a shower stool. (*Respondent's Exhibit 5, at Page S-4; Respondent's Exhibit 6 at Page C-4; Petitioner's Exhibit 1, at Page 1; Respondent's Exhibit 6, at page C-5; Testimony of Minnie Simmons*).

8.

Appendix F, the SOURCE Level of Care and Placement Instrument, indicates that Petitioner needs assistance with dressing and has moderate impairment under the category of limited motion. *Respondent's Exhibit 8*.

#### Bladder Incontinence

9.

Petitioner is occasionally bladder incontinent and wears briefs or pads. Petitioner requires supervision while changing her incontinence pads, to make sure that the soiled pad is removed and a clean, dry one is properly applied. (*Testimony of Minnie Simmons; Respondent's Exhibits 5 at Page S-5; Exhibit 6, at Pages C4-C5; Petitioner's Exhibit 1, at Page 1; Respondent's Exhibit 8*).

---

<sup>4</sup> Petitioner's father testified that, when Petitioner visited his home around Christmas 2012, he helped her up and down the stairs because she was "wobbling" and he was afraid she might fall and hit her head. *Testimony of [REDACTED]*.

10.

During the reassessment, Petitioner complained to Nurse Simmons of "chronic back pain" and complained of back pain on the day of the reassessment. Nurse Simmons found that Petitioner experiences intermittent pain, experiences breakthrough pain ("sudden, acute flare-ups of pain"), and does not have adequate pain control despite following a therapeutic regimen. (*Testimony of Minnie Simmons; Petitioner's Exhibit 1, at Page 1; Respondent's Exhibit 5 at Page S-6*).

11.

Petitioner's meals are prepared by Personal Care Home caregivers. Petitioner's mother and legal guardian, [REDACTED], gave credible and undisputed testimony that that Petitioner is not capable of cooking on her own because of her mental health condition and back pain prevents her from standing up to prepare a meal. (*Petitioner's Exhibit 1, at Page 1; Respondent's Exhibit 6 at page C-3 (PCH provides "all assistance" with food preparation); Testimony of [REDACTED]*).<sup>5</sup>

12.

During the reassessment, Nurse Simmons found that Petitioner's "conditions/diseases make her cognitive, ADL, mood or behavior patterns unstable (fluctuating, precarious, or deteriorating)." She further found that Petitioner was "experiencing an acute episode, or a flare-up or a recurrent or chronic problem." (*Respondent's Exhibit 5, at Page S-6*).

13.

Based upon her reassessment, Nurse Simmons recommended Petitioner's continued eligibility to participate in the SOURCE Program and wrote: "Due to limited ROM [range of motion], chronic back, extremities pain need assistance with ADLs [activities of daily living] and IADL [instrumental activities of daily living] OA [osteo-arthritis] diagnosis." She recommended ALS [assisted living service, or personal care home] at a frequency of 24 hours per day, seven days per week, and that Petitioner remain with the current Provider (Heritage) to receive PCH services. (*Respondent's Exhibit 6, at Page C-6; Petitioner Exhibit 1, at Page 2; Testimony of Minnie Simmons*).

14.

Registered Nurse Sandra Odom, reviewed Nurse Simmons' November 26, 2012, reassessment. Nurse Odom no longer works for Respondent and did not testify at the hearing. (*Testimonies of Minnie Simmons and [REDACTED]*) On behalf of Respondent, Registered Nurse Kathy Jackson reviewed Petitioner's record after she filed her appeal. However, Nurse Jackson was not involved in Petitioner's reassessment process and has no personal knowledge of the information involving Petitioner's reassessment in this matter. (*Testimony of Kathy Jackson*).

---

<sup>5</sup> [REDACTED] also testified that Petitioner wants to lie down all the time and frequently complains about her back hurting. [REDACTED] testified that Petitioner is not capable of taking her medications on her own due to both her mental condition and her physical condition. (*Testimony of [REDACTED]*).

15.

After reviewing the November 26, 2012, reassessment, Nurse Odom completed an Appendix I indicating that Petitioner meets criteria 1 and 7 in Column A, but does not meet any criteria in Columns B or C, and therefore does not meet the Intermediate Nursing Home Level of Care. (*Respondent's Exhibit 7; Testimony of Kathy Jackson*).

16.

On around November 28, 2012, the Interdisciplinary team, comprised of other nurses, Petitioner's case manager and a medical doctor, met to discuss Petitioner a few days after Nurse Simmons' reassessment. After review and discussion, the Interdisciplinary Team determined that Petitioner does not meet the nursing home level of care criteria required for participation in the SOURCE program. (*Respondent's Exhibits 4 and 8; Testimonies of Minnie Simmons, Kathy Jackson*).

17.

Respondent mailed an Appendix Z notice of termination dated November 28, 2012, to Petitioner's guardian, [REDACTED], who did not understand the notice. The Appendix Z notice of termination contained a series of boxes that could be checked to provide the recipient with information regarding Respondent's decision. On Petitioner's notice, boxes were checked that correspond to the following statements: "Decision to Terminate of Deny Services: You do not meet the Eligibility requirements as found in the Elderly and Disabled 1915-c Home and Community Based Services Medicaid Waiver as outlined in Section 701 in the Georgia Department of Community Health Manual, Part II Policies and Procedures for Service Options Using Resources in Community Environments (SOURCE). ... You are not eligible because you do not ... [m]eet criteria for Intermediate Nursing Home Level of Care (pursuant to Section 801.3 of the SOURCE manual) ... Per Re-Assessment 11-26-12." (*Respondent's Exhibit 4; Testimonies of Lorrie Stewart, Minnie Simmons, Kathy Jackson and [REDACTED]*). The Appendix Z notice of termination in this case does not explain why Petitioner does not meet the applicable level of care and Respondent did not provide [REDACTED] with a detailed explanation of the reason(s) for Petitioner's termination from the SOURCE Program. (*Testimony of [REDACTED]*).

18.

The SOURCE manual provides that, when a SOURCE member has been found not to meet the level of care, "prior to review by the Interdisciplinary team, the nurse (R.N. or L.P.N.) shall review the member's diagnoses, medications, and treatments with the member's PCP [primary care physician] to ensure concurrence with Member's health and functional status as documented on the MDS-HC." (*Respondent's Exhibit 1, Section 1406(B), at Page A-15; Testimony of Lorrie Stewart*).

19

Respondent did not learn of Petitioner's tachycardia diagnosis, episode of dizziness and falling down, or cardiology testing until after it had notified Petitioner of her impending SOURCE termination. (*Testimony of Lorrie Stewart; Testimony of Minnie Simmons*). Nurse Simmons requested medical records from Petitioner's primary care physician, Dr. Amin, but did not obtain the records until January 2013. Nurse Simmons testified that, had she seen Petitioner's medical records regarding the tachycardia diagnosis prior to the completion of the SOURCE reassessment, her reassessment paperwork would have reflected the tachycardia diagnosis, and she would have spoken with Petitioner's health care providers

about the tachycardia and how it could affect Petitioner's functioning. In addition, if Nurse Simmons had known about Petitioner's episode of dizziness and falling down at the time that she did the reassessment, she would have asked the Personal Care Home caregiver whether Petitioner had any reoccurring dizziness or issues related to the previous fall. Nurse Simmons does not have an opinion about whether tachycardia can cause dizziness and falling down. (*Testimony of Minnie Simmons*).

20.

Prior to the Interdisciplinary Team's review, neither Nurse Odom, Nurse Jackson, nor Nurse Simmons reviewed Petitioner's diagnoses, medications, and treatments with her primary care physician, Dr. Amin. Nurse Simmons only spoke with Dr. Amin's receptionist, who did not give her medical information about Petitioner and was unaware if anyone had spoken with Petitioner's primary care physician. Nurse Jackson never spoke with Dr. Amin. (*Testimonies of Minnie Simmons and Kathy Jackson*). There is evidence in the record that Nurse Odom contacted Dr. Amin on or around December 12, 2012. However, this date is after the Interdisciplinary Team met to discuss Petitioner on November 28, 2012, and Nurse Odom did not testify at the hearing to provide the content of her conversation with Dr. Amin. Therefore, the evidence remains in dispute as whether Dr. Amin is in concurrence with Petitioner's health and functional status as documented on the MDS-HC. (*Testimony of Kathy Jackson; Respondent's Exhibit 9*).

**PETITIONER'S ELIGIBILITY:**

21.

The level of care criteria for SOURCE is divided into three columns: Columns A, B, and C. An individual must require monitoring and overall management of a medical condition(s) under the direction of a licensed physician to meet the first criterion in Column A, and then any of the seven additional criteria in Column A. Then the individual must meet one additional criterion in either Column B or Column C (but not including the fifth criterion in Column C). See Source Manual, Respondent's Exhibit 1, at Section 801 at VIII-3; *Testimony of Lorrie Stewart*.

22.

Petitioner meets the following criteria for Intermediate Nursing Home Level of Care. Those criteria that were not addressed at the hearing are not listed. Please see the Source Manual, for a complete listing of criteria. (Respondent's Exhibit 1, at Section 801 at VIII-3).

**Level of Care Criteria for Petitioner from Appendix I, SOURCE Manual**

<b>COLUMN A</b>	<b>COLUMN B</b>	<b>COLUMN C</b>
<i>In addition to the criteria in #1 below, the patient's specific medical condition must require any of the following plus one item from Column B or C.</i>	<i>The mental status must be such that cognitive loss is more than occasional forgetfulness.</i>	<i>Functional Status One of the following conditions must exist (with the exception of #5)</i>

1. Requires monitoring and overall management of a medical condition(s) under the direction of a licensed physician	N/A.	1. Transfer and locomotion performance of the resident requires limited/extensive assistance by staff through help of one person physical assistance.
7. Monitoring of vital signs and laboratory studies or weights.	N/A.	3. Requires direct assistance of another person to maintain continence.
8. Management and administration of medications including injections.	N/A	5. Direct stand-by supervision or cueing with one person physical assistance from staff to complete dressing and personal hygiene.

**COLUMN A, Level of Care Criteria:**

1. Petitioner meets Column A, criterion #1. Petitioner's medical conditions include tachycardia, schizophrenia, depression, osteoarthritis, hypertension, gastro-esophageal reflux disease (GERD), hypothyroidism, insomnia and constipation, which require monitoring and overall management of these medical conditions by a licensed physician. *(Respondent's Exhibit 7; Testimony of Minnie Simmons)*.
2. Petitioner meets Column A, criterion #7. Petitioner requires monitoring of her vital signs, specifically monitoring of her blood pressure. *(Respondent's Exhibit 7; Testimony of Minnie Simmons)*.

**COLUMN C, Level of Care Criteria:**

1. Petitioner meets Column C, criterion #1. Petitioner's transfer and locomotion performance requires limited assistance by staff through the help of one person for physical assistance. Specifically, Petitioner's performance on stairs involved "total dependence (full performance by others during entire period)." In addition, Petitioner's capacity for stairs required "maximal assistance (help throughout task, but performs less than 50% of task on own)." *(Respondent's Exhibit 5, at Page S-4; Testimony of Minnie Simmons)*. Petitioner's Personal Care Home has steps leading up to its front door. Therefore, Petitioner requires at least limited assistance by staff to help her access the Personal Care Home. These facts indicate that Petitioner meets Column C, criterion #1.

2. Petitioner meets Column C, criterion #3. Petitioner requires direct assistance of another person to maintain continence. (*Respondent's Exhibit 7*. Petitioner is occasionally incontinent and requires supervision while changing her incontinence pads to make sure that the soiled pad is removed and a clean, dry one is properly applied. Respondent has cited no SOURCE definition of "assistance" that excludes this kind of assistance to maintain continence.<sup>6</sup> Nor has Respondent proven that Petitioner's incontinence has a mental health etiology rather than a physical etiology.<sup>7</sup> These facts indicate that Petitioner meets Column C, criterion #3.
  
3. Petitioner meets Column C, criterion #5. The credible evidence in this matter indicates that Petitioner requires "direct stand-by supervision or cueing with one-person physical assistance from staff to complete bathing, dressing, and managing personal hygiene." Petitioner requires "supervision (oversight/cueing)" for bathing and personal hygiene and requires assistance with dressing of her lower extremities. (*Testimony of Minnie Simmons; Petitioner's Exhibit 1, at Page 1; Respondent's Exhibit 5, at Page S-4; Respondent's Exhibit 6, at Page C-4; and Respondent's Exhibit 8*). Petitioner is occasionally bladder incontinent and wears briefs or pads. Petitioner requires supervision while changing her incontinence pads, to make sure that the soiled pad is removed and a clean, dry one is properly applied. (*Testimony of Minnie Simmons; Respondent's Exhibits 5 at Page S-5; Exhibit 6, at Pages C4-C5; Petitioner's Exhibit 1, at Page 1; Respondent's Exhibit 8*). These facts indicate that Petitioner meets Column C, criterion #5.

## II. CONCLUSIONS OF LAW:

1.

Because it seeks to terminate Petitioner's services under the SOURCE Program, Respondent bears the burden of proof. Ga. Comp. R. & Regs. r. 616-1-2-.07(1)(d). However, Petitioner bears the burden of proof as to any affirmative defenses. See O.C.G.A. §24.4.1. The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21(4).

2.

The acronym SOURCE stands for "Service Options Using Resources in Community Environments." SOURCE is designed to provide home and community based services in lieu of institutional care for individuals who are aged 65 or over, or physically disabled, and who meet the Nursing Facility level of care. (*Testimony of Lorrie Stewart; Respondent's Exhibit R-1, at pp.VII-2*).

3.

---

<sup>6</sup> The SOURCE manual contains a definition section, but it does not define either "supervision" or "assistance." *Respondent's Exhibit 1* at pages i-iii.

<sup>7</sup> Nurse Jackson testified that SOURCE members must require "hands-on" assistance to maintain continence in order to satisfy Appendix I, Column C, criterion 3 (*Respondent's Exhibit 7*). *Testimony of Kathy Jackson*. However, Appendix I, Column C, criterion 3 does not refer to "hands-on" assistance, and Nurse Jackson cited no policy authority for her interpretation.



Section 1915(c) of the Social Security Act allows states to provide, “under a waiver of statutory requirements, an array of home and community-based services that an individual needs to avoid institutionalization.” 42 C.F.R. § 441.300. “Home or community-based services’ means services not otherwise furnished under the State’s Medicaid plan, that are furnished under a waiver granted under the provisions of Part 441, subpart G of this chapter.” 42 C.F.R. § 440.180(a). Those services may include: case management services, homemaker services, home health aide services, personal care services, adult day health services, habilitation services, respite care services, certain day treatment or other partial hospitalization services, or other services requested by the state and approved by CMS. *Id.*

4.

Prior to October 2007, the SOURCE program was administered under the state plan. In 2008, Respondent filed an application to amend the Home and Community-Based Services Waiver to, among other things, add SOURCE services. (Testimony of Lorrie Stewart; Respondent’s Exhibit R-2). In so doing, Respondent was required to specify one target group and the services under the waiver. (Testimony of Lorrie Stewart; Ex. R-2 at p. 14; *see also* 42 CFR §441.301(b)(6). Respondent specified the “Aged or Disabled, or Both” target group, with the Aged (65 or over) and Disabled (Physical) subgroups to receive waiver services.<sup>8</sup> (Testimony of Lorrie Stewart; Respondent’s Exhibit. R-2 at p. 14). Additionally, as part of the waiver application, Respondent was required to add an institutional level of care. Respondent specified the Nursing Facility level of care. (Testimony of Lorrie Stewart; Respondent’s Exhibit. R-1 at Page, VIII-3). The Centers for Medicare and Medicaid Services (“CMS”) approved the amendment retroactive to October 1, 2007. (Testimony of Lorrie Stewart).

5.

Under the SOURCE Program, members are evaluated for continued eligibility at least annually, and more often as necessary, to evaluate continued eligibility. Ordinarily, a licensed practical nurse performs the reevaluation and data collection, which is reviewed and approved by a supervising registered nurse to determine if the member meets the level of care based on the assessment. (Testimony of Lorrie Stewart; Respondent’s Exhibit R-1 at p. IX-9).

6.

SOURCE members must meet the Level of Care criteria for Intermediate Nursing Home Placement. 42 C.F. R. §§441.30, 441.301. The target population for SOURCE is physically disabled individuals who are functionally impaired or who have acquired a cognitive loss that results in need of services to assist with the performance of the activities of daily living (ADLs). (Source Manual, Section 801.3, Respondent’s Exhibit R-1 at Page, VII-1). In other words, but for the home and community-based services, the individual would be residing in a nursing home. 42 U.S.C. 1396n(c) and 42 CFR 441.300 *et seq.*; *see also* 42 U.S.C. 1396a(a)(10)(D). In this matter, the credible and undisputed evidence indicates that, Petitioner has medical diagnoses of tachycardia, schizophrenia, depression, osteoarthritis, hypertension, gastro-esophageal reflux disease (GERD), hypothyroidism, insomnia and constipation, which require monitoring and overall management of these medical conditions by a licensed physician.

---

<sup>8</sup> On the waiver application, Mental Illness is listed as a separate target. Respondent could have chosen that target group in lieu of the “Aged or Disabled, or Both” target group, but did not. Furthermore, Respondent could have chosen the “Disabled (Other)” subgroup under its chosen target group, but it did not. (Ex. R-2 at p.14).

Petitioner is functionally impaired, and has a mental cognitive loss that requires the need of services to assist her with the performance of activities of her daily living. Accordingly, Petitioner meets the LOC criteria for Intermediate Nursing Home Placement.

7.

To meet the Nursing Facility level of care criteria and SOURCE Program guidelines, services may be provided to an individual with a stable medical condition requiring intermittent skilled nursing services under the direction of a licensed physician (Column A, Medical Status) AND either a mental cognitive (Column B) and/or functional impairment that would prevent self-execution of the required nursing care (Column C Functional Status). (Respondent's Exhibit R-1, at Page VIII-3). In this matter, Petitioner satisfies the first and seventh, criteria of Column A, of Appendix I; and the first, third, and fifth criteria of Column C, of Appendix I. Accordingly, Petitioner meets the LOC criteria for eligibility under the SOURCE Program guidelines.

8.

Members who fail to meet the eligibility criteria will be reviewed by the Interdisciplinary team prior to the issuance of the notification of adverse action (Appendix Z). Prior to review by the Interdisciplinary team, the assessing nurse shall review the member's LOC with the member's primary care physician (PCP) to ensure concurrence with member health and functional status as documented on the MDS-HC. (SOURCE Manual) § 1406(B). In this matter, Respondent has failed meet its burden of establishing that that the assessing nurse met with Petitioner's PCP prior to the review by the Interdisciplinary team, and that Dr. Amin is in concurrence with Petitioner's health and functional status as documented on the MDS-HC.

9.

Respondent failed to provide Petitioner with an adequate Notice of Termination from the SOURCE Program. The Appendix Z notice of termination that Respondent sent to Petitioner did not provide her with adequate notice of the reasons for her SOURCE termination. Federal law requires that states provide Medicaid recipients with written notice and an opportunity to request a fair hearing before their benefits are terminated. See 42 U.S.C. § 1396a(a)(3); 42 C.F.R. § 431.206. See also *Doe v. Bush*, 261 F.3d 1037, 1056-57 (11<sup>th</sup> Cir. 2001). Federal regulations also specify the contents of such notice, which must include, among other things, a statement of the action the state intends to take and the reason for the intended action. 42 C.F.R. § 431.210. The underlying purpose of the federal notice requirements is to ensure that states meet the due process standard set forth in *Goldberg v. Kelly*, 397 U.S. 254 (1970). See 42 C.F.R. § 431.205(d).

10.

In *Goldberg v. Kelly*, the United States Supreme Court held that a recipient of public assistance must "have timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally." 397 U.S. at 267-68 (emphasis added). In this matter, Respondent's notice of termination stated that Petitioner does not meet the eligibility

requirements in the SOURCE manual because she does not meet criteria for Intermediate Nursing Home Level of Care pursuant to Section 801.3 of the SOURCE manual. The notice references the November 26, 2012 reassessment, but does not enclose it, quote it, or otherwise provide details. Without more information regarding the reasons why Petitioner does not meet the applicable level of care, the notice of termination is not specific enough to allow Petitioner an opportunity to prepare a meaningful rebuttal. *See Cobb County School Dist. v. Barker*, 271 Ga. 35, 37 (1999). Reasonable notice of termination of SOURCE benefits due to a level of care determination must include, at a minimum, a short and plain statement regarding the factual basis for the Department's conclusion. *See* O.C.G.A. § 50-13-13(a) (under the Administrative Procedures Act, an agency must provide a short and plain statement of the matters asserted). In this matter, Respondent failed to provide Petitioner with the required notice of termination and is not authorized to terminate Petitioner's participation in the SOURCE program at this time.

11.

Respondent has failed to show by a preponderance of the evidence that Petitioner does not meet the LOC criteria for eligibility under SOURCE Medicaid program. Instead, the credible evidence establishes that Petitioner satisfies the first and seventh, criteria of Column A, of Appendix I; and the first, third, and fifth criteria of Column C, of Appendix I. Satisfaction of these criteria establishes that Petitioner meets the LOC criteria for continued eligibility under the SOURCE Medicaid program.

## II. DECISION:

Based upon the foregoing, it is concluded that Petitioner meets the Level of Care Criteria to be eligible for the Service Options Using Resources in Community Environments ("SOURCE") Medicaid Waiver Program. Accordingly, Respondent's decision to terminate Petitioner's services under the SOURCE Program is **HEREBY REVERSED**.

**SO ORDERED**, this 23<sup>rd</sup> day of April, 2013.

---

**CAROL WALKER-RUSSELL**

Administrative Law Judge