



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 1736  
Romney, WV 26757

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

May 11, 2006

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

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 18, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to decrease homemaker hours under the Aged Disabled Waiver, A/DW, program.

In arriving at a decision, the State Hearing 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 A/DW program is based on current policy and regulations. Some of these regulations state as follows: The Aged/Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who meet all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. (Aged/Disabled (HCB) Services Manual 570- 570.1b (11/1/03).

The information which was submitted at your hearing revealed that at the time of the January 9, 2006 Pre-Admission Screening Assessment, you did not meet the eligibility criteria for level of care D under the Aged/Disabled Waiver Program in which you were previously assessed.

It is the decision of the State Hearings Officer to **uphold** the proposed action of the Department to decrease homemaker hours to a level C under the A/DW program.

Sincerely,

Sharon K. Yoho  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
██████, CCIL - Boggess, BoSS - ██████, WVMI

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

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**Claimant,**

**v.**

**Action Number: 06-BOR-1298**

**West Virginia Department of  
Health and Human Resources,**

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on April 18, 2006 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 convened on April 18, 2006 on a timely appeal, filed January 27, 2006.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

**II. PROGRAM PURPOSE:**

The Program entitled Aged Disabled Waiver 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 Witnesses:

\_\_\_\_\_, claimant, by speaker phone

\_\_\_\_\_, claimant's sister

\_\_\_\_\_, claimant's mother

\_\_\_\_\_, claimant's homemaker

\_\_\_\_\_, case manager, Coordinating Council for Independent Living

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services by speaker phone

\_\_\_\_\_, WVMI by speaker phone

Presiding at the Hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided is whether the Department was correct in their decision to reduce homemaker hours under the Aged/Disabled Waiver (HCB) program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community Based Service Manual §570 and §580

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

D-1 Aged/Disabled Home and Community based Services Manual §570.1 c,d. and §580.2

D-2 Pre-Admission Screening, PAS, completed January 9, 2006

D-3 Eligibility Determination dated January 9, 2006

D-4 Notice of proposal to decrease homemaker hours January 20, 2006

**VII. FINDINGS OF FACT:**

- 1) Ms. \_\_\_\_\_ is a 58-year-old female. She is an active participant in the A/DW program and her eligibility was undergoing an annual evaluation on January 9, 2006.
- 2) A WV Medical Institute nurse completed a Pre-Admission Screening (PAS) in Ms. \_\_\_\_\_'s home with the claimant, \_\_\_\_\_ (case manager), \_\_\_\_\_ (support homemaker and \_\_\_\_\_ (homemaker RN) present. This PAS evaluation determined that the claimant remained eligible for the Aged/Disabled Waiver program however; it was determined that the level of care that she required had decreased from level D to a level C.

- 3) The January 9, 2006 PAS assigned this claimant with 20 points in determining the level of care required. The evaluating nurse assigned seven (7) points in the areas of Medical Conditions/Symptoms and ten (10) points in the area of functional levels. One (1) point was given for Professional and Technical Care needs for Continuous Oxygen. One (1) point was awarded for needing assistance in Medicating and one (1) point was assigned for inability to vacate without assistance.
- 4) Issues raised by the claimant's witnesses were in the areas of paralysis, dysphagia (swallowing), bathing, dressing, grooming, and vision.
- 5) The claimant's witnesses believe there is paralysis, but no diagnosis of paralysis was provided to WVM. The claimant does have some limited movement of limbs.
- 6) Ms. \_\_\_\_\_ takes the prescription drug, Nexium, for a reflux problem caused by a hernia. The client did not complain of swallowing problems at the PAS nor is the drug prescribed for a swallowing problem.
- 7) The claimant spends her days and nights in her bed with her body drawn up in a contracted position. She lies under blankets undressed for the most part. She suffers from involuntary movement of limbs that push her covers off. The nurse observed the claimant lift her arm. Ms. \_\_\_\_\_ told the nurse that she could lift the arm up to help with putting on a robe.
- 8) The claimant's homemaker, \_\_\_\_\_, testified that she will put a wash cloth in Ms. \_\_\_\_\_ hand so she can try to wash her face. She is not successful. She also will put toothpaste on the claimant's toothbrush, but the claimant cannot move the brush to brush her teeth.
- 9) Ms. \_\_\_\_\_ does have glaucoma and cataracts. Her witnesses believe this condition to be uncorrectable since Ms \_\_\_\_\_'s physical condition prohibits her from being transported to a facility where it can be corrected.
- 10) Aged/Disabled Home and Community-Based Services Manual Section 570 (D-1)-Program Eligibility for client:

Applicants for the ADW Program must meet the following criteria to be eligible for the Program:

C. Be approved as medically eligible for NF Level of Care.

- 11) Aged/Disabled Home and Community-Based Services Manual Section 570.1.a – Purpose: The purpose of the medical eligibility review is to ensure the following:
  - A. New applicants and existing clients are medically eligible based on current and accurate evaluations.

- B. Each applicant/client determined to be medically eligible for A/DW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term services needs.
- C. The medical eligibility determination process is fair, equitable and consistently applied throughout the state.

**12) Aged/Disabled Home and Community-Based Services Manual Section 570.1.b – Medical Criteria:**

An individual must have five deficits on the PAS to qualify medically for the A/DW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

- A. Decubitus - Stage 3 or 4 (Item 24 on PAS 2005)
- B. Unable to vacate a building- a person is physically unable at all times at Level 3 or higher in walking or mentally incapable of leaving the building at Level 3 or higher in orientation with a diagnosis of dementia, Alzheimer’s, or related condition. (Item 25, I and 33, on the PAS 2005).
- C. Functional abilities of individual in the home. (Item 25 on the PAS 2005).
  - Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)
  - Bathing ----- Level 2 or higher (physical assistance or more)
  - Grooming--- Level 2 or higher (physical assistance or more)
  - Dressing ---- Level 2 or higher (physical assistance or more)
  - Continence-- Level 3 or higher (must be total incontinent- defined as when the recipient has no control of bowel or bladder functions at any time)
  - Orientation-- Level 3 or higher (totally disoriented, comatose)
  - Transfer----- Level 3 or higher (one person or two person assist in the home)
  - Walking----- Level 3 or higher (one person assist in the home)
  - Wheeling----- Level 3 or higher (must be Level 3 or 4 on walking in the home to use Level 3 or 4 for wheeling in the home. Do not count outside the home)
- D. Individual has skilled needs in one or more of these areas B (g)suctioning, (h)tracheostomy, (i)ventilator, (k)parenteral fluids, (l)sterile dressings, or (m) irrigations. (Item 26 on the PAS 2005)
- E. The individual is not capable of administering his/her own medications is defined as an individual not capable of administering his/her own medications if the prescription medication must be placed in the recipient’s hand, mouth, tube or eye by someone other than the recipient at all times.

- 13) Aged/Disabled Home and Community Based Service Manual # 570.1.c,d:  
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 Level 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 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

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

**VIII. CONCLUSIONS OF LAW:**

- 1) The Aged Disabled Waiver policy provides that an individual must be assigned 26 to 44 points to qualify as requiring a Level D in care, which is 155 hours per month in homemaker services. 18 to 25 points indicates a Level C. The evaluating nurse assigned 20 points, which falls within the Level C of care.
- 2) Evidence and testimony support that the claimant should have been assessed two (2) points for both bathing and grooming instead of the one (1) point for each. It is clear that Ms. \_\_\_\_\_ cannot assist in these tasks. Evidence and testimony was not convincing that a point should be awarded for swallowing, paralysis, vision or dressing. Two additional points would still not elevate her total points to 26 which is what policy stipulates for a Level D in care.

**IX. DECISION:**

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the nurse should have assigned 2 points during the PAS completion of January 9, 2006, which would place her needs within the Level C category. With the authority granted to me by the WV State Board of Review. I am ruling to **uphold** the Agency's proposed action to decrease this claimant's homemaker services under the Aged/Disabled Title XIX (HCB) Waiver program.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 11th Day of May, 2006.**

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**Sharon K. Yoho  
State Hearing Officer**