



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

June 22, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 15, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker service hours under the Aged/Disabled (HCB) Title XIX Waiver Services 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 Aged/Disabled Waiver Program is based on current policy and regulations. One of these regulations specifies that for the Aged/Disabled Waiver Program, the number of homemaker service hours is determined based on your Level of Care (LOC). The Level of Care is determined by evaluating the Pre-Admission Screening Form (PAS) and assigning points to documented medical conditions that require nursing services. Program services are limited to a maximum number of units/hours which is reviewed and approved by WVM. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual 520 & 570.1)

Information submitted at your hearing revealed that you continue to require the degree of care and services necessary to qualify medically for the Aged/Disabled Waiver Program and your documented medical conditions confirm that your Level of Care should be a Level "D" rating. As a result, you are eligible to receive five (5) hours per day or 155 hours per month of homemaker services.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to decrease your Level of Care under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
CWVAS  
BoSS  
WVM

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 06-BOR-876**

**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 June 22, 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 June 15, 2006 on a timely appeal filed January 18, 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:**

\_\_\_\_, daughter of Claimant

\_\_\_\_, son-in-law of Claimant

\_\_\_\_, Homemaker RN, Care, Inc.

Kay Ikerd, RN, BoSS (participating telephonically)

\_\_\_\_, RN, WVMI (participating telephonically)

Presiding at the hearing was Pamela L. Hinzman, 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 Agency was correct in its proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled Waiver (HCB) Program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community-Based Services Manual Sections 520, 570 and 580

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

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 520, 570 and 580
- D-2 Pre-Admission Screening (PAS) 2005 assessment completed on December 29, 2005
- D-3 Notice of Decision dated January 5, 2006

**Claimant's Exhibits**

- C-1 Letter from Dr. \_\_\_\_\_
- C-2 Letter from Dr. \_\_\_\_\_
- C-3 Letter from \_\_\_\_\_
- C-4 Letter from \_\_\_\_\_
- C-5 Information from Dr. \_\_\_\_\_

**VII. FINDINGS OF FACT:**

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter ADW, was undergoing an annual reevaluation to verify continued medical eligibility.
- 2) \_\_\_\_\_ RN, West Virginia Medical Institute, completed a medical assessment (D-2) on December 29, 2005 and determined that the Claimant continues to meet the

medical eligibility criteria. The Claimant was assigned 20 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a LOC "C" (20 points)- eligible for four (4) hours per day or 124 hours per month of homemaker services. It should be noted that the Claimant previously qualified as a LOC "D"- eligible for five (5) hours per day or 155 hours per month of homemaker services.

- 3) The Claimant was sent notification on January 5, 2006 (D-3) advising her of the proposed reduction in hours.
- 4) Witnesses for the Claimant contended that additional points should be awarded in the following areas:

**Angina at rest and exertion-** A letter from Dr. [REDACTED] of Charleston Heart Specialists (C-1) dated May 26, 2006 states that the Claimant has a history of coronary artery bypass surgery and experiences angina at both rest and exertion. The letter states that the Claimant is not a candidate for further cardiac intervention in view of her age and medical condition. While the letter was dated May 26, 2006, Mrs. \_\_\_\_\_ stated that the conditions diagnosed by Dr. [REDACTED] were present at the time the PAS was completed in December 2005. Both Ms. [REDACTED] and Mrs. \_\_\_\_\_ testified that the Claimant carries nitroglycerin with her and Mrs. \_\_\_\_\_ stated that the Claimant has used nitroglycerin since 1999.

Ms. [REDACTED] testified that information concerning nitroglycerin was not reported to her at the time of the assessment and angina was not listed as a diagnosis on the referral form from the physician.

**Based on information presented during the hearing, one (1) additional point is awarded for angina at rest and one (1) additional point is awarded for angina upon exertion.**

**Significant arthritis-** The letter from Dr. [REDACTED] states that the Claimant has a diagnosis of significant arthritis.

Ms. [REDACTED] testified that the Claimant reported a history of arthritis during the assessment, but was not taking prescription medication and did not have a diagnosis.

**Based on information from Dr. [REDACTED], one (1) additional point is awarded for significant arthritis.**

**Dysphagia-** Mrs. \_\_\_\_\_ and Ms. [REDACTED] testified that the Claimant has difficulty swallowing. Information from Dr. [REDACTED] dated January 17, 2006 (C-5) indicates the Claimant has a diagnosis of dysphagia.

Ms. [REDACTED] testified that the Claimant reported no difficulty swallowing, had not been tested for swallowing difficulties and that dysphagia was not listed as a diagnosis at the time of the assessment.

**Based on information presented during the hearing, one (1) additional point is awarded for dysphagia.**

**Pain-** Mrs. \_\_\_\_\_ testified that her mother experiences pain and takes pain medication. In addition, information from Dr. [REDACTED] (C-5) states that the Claimant has back pain.

Ms. [REDACTED] testified that the Claimant was not taking prescription medication for pain and that pain was not listed as a diagnosis at the time of the assessment.

***One (1) additional point is awarded for pain based on information presented during the hearing.***

**Anxiety (mental disorder)-** Ms. [REDACTED] testified that the Claimant has panic disorder and the letter from Dr. [REDACTED] confirms that the Claimant has a history of panic disorder. A letter from the Claimant's Homemaker, [REDACTED] (C-4), states that the Claimant is "very nervous" and becomes very upset when she thinks that she is alone.

Ms. [REDACTED] testified that the Claimant did not report anxiety or depression at the time of the assessment and was not taking medication for a mental disorder.

***One (1) additional point is awarded for anxiety (mental disorder).***

**Total care with dressing-** Mrs. \_\_\_\_\_ testified that either she or the Claimant's care giver must dress her mother as her mother has poor eyesight. In her letter, Ms. [REDACTED] states that she puts the Claimant's panties on her, raises the Claimant's arms and places them in the arm holes of dresses, and puts socks and shoes on the Claimant.

Ms. [REDACTED] testified that the Claimant reported she is able to assist with her own dressing, but it was noted during the assessment that she requires assistance on her left side as the result of a stroke.

***Based on information presented during the hearing- and in light of the Claimant's vision problems and history of stroke- one (1) additional point is awarded for total care with dressing.***

**Total incontinence of bowel-** Mrs. \_\_\_\_\_ testified that her mother does not know when her bowels move and should be rated as totally incontinent of bowel. Mr. \_\_\_\_\_ testified that he has cleaned up areas of the residence after the Claimant's bowel movements as she does not realize that she has had an accident. Mrs. \_\_\_\_\_ testified that her mother wears Poise pads and, while the Claimant has a bedside commode, she does not know when she needs to go to the bathroom. The letter from Ms. [REDACTED] indicates that she takes the Claimant to the bathroom several times per day as the Claimant takes a fluid pill and her bowels move frequently.

Ms. [REDACTED] testified that the Claimant stated she has occasional bowel incontinence on the date of the assessment.

***No additional points are awarded for total incontinence of bowel as information***

*presented during the hearing is inconclusive. It appears that the Claimant may use the toilet in some situations as Ms. [REDACTED] letter indicates that she takes the Claimant to the bathroom.*

Ms. [REDACTED] stated that no one in attendance- including Mrs. \_\_\_\_\_ - voiced objections when the PAS findings were reviewed on the date of the assessment. Mrs. \_\_\_\_\_ testified that she did not understand all of the questions asked during the assessment.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 570.1.c and 570.1.d (D-1): There will be four levels of care for clients of ADW homemaker services. Points will be determined based on the following sections of the PAS:

- #23- 1 point for each (can have total of 12 points)
- #24- 1 point
- #25- Level I- 0 points  
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 are 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 for Alzheimer’s or other dementia
- #34- 1 point if terminal

The total number of points allowable is 44.

#### **LEVELS OF CARE SERVICE LIMITS**

- Level A- 5 points to 9 points- 2 hours per day or 62 hours per month
- Level B- 10 points to 17 points- 3 hours per day or 93 hours per month
- Level C- 18 points to 25 points- 4 hours per day or 124 hours per month
- Level D- 26 points to 44 points- 5 hours per day or 155 hours per month

#### **VIII. CONCLUSIONS OF LAW:**

- 1) Policy dictates that an individual’s Level of Care for the Aged/Disabled Waiver Program is determined by the number of points the individual obtains on the PAS 2005.
- 2) The Claimant received 20 points on a PAS completed by Ms. [REDACTED] in December 2005 in conjunction with an annual reevaluation.
- 3) As a result of testimony presented during the hearing, seven (7) additional points are awarded to the Claimant.
- 4) This brings the Claimant’s total number of points to 27, which is indicative of a Level of Care “D” and renders the Claimant eligible for five (5) hours per day or 155 hours per month of homemaker service hours.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to reduce the Claimant's homemaker service hours 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 22nd Day of June, 2006.**

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**Pamela L. Hinzman  
State Hearing Officer**