



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
150 Maplewood Ave.  
Lewisburg, WV 24901

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

September 7, 2007



Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 28, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to decrease homemaker hours under the Aged Disabled Waiver, ADW, 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 ADW 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 after review of the current PAS-2000, you meet the criteria for level of care D which equates to 155 service hours per month.

It is the decision of the State Hearing Officer to reverse the proposed action of the Department to decrease homemaker hours to a level C under the ADW Program.

Sincerely,

Margaret M. Mann  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review

[REDACTED]  
Kay Ikerd, BoSS  
[REDACTED], WVMI



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] Claimant's son & POA  
[REDACTED] Witness for the Claimant  
[REDACTED], Case Manager, [REDACTED]  
[REDACTED], Homemaker RN, [REDACTED]  
[REDACTED], Homemaker, [REDACTED]  
Kay Ikerd, RN, BoSS (By Telephone)  
[REDACTED], RN, WVMi (By Telephone)

Presiding at the hearing was Margaret M. Mann, 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 §503, §503.1.1, §503.2.1 and §503.2.2

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

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community based Services Manual §503.2., §503.2.1 and §503.2.2
- D-2 Pre-Admission Screening, PAS-2000, completed June 19, 2007
- D-3 Notice of Decision dated June 22, 2007
- D-4 Level of Care Change Request dated 05/04/2007
- D-5 Contact Dates

**Claimant's Exhibits:**

- C-1 Prescription from Dr. [REDACTED] dated 04/24/2007

## VII. FINDINGS OF FACT:

- 1) The Claimant's birth date is listed as 11/07/1931. She is an active participant in the ADW Program and her eligibility was undergoing a re-evaluation on June 19, 2007. Her level of care had been changed to level 'D' on 05/04/2007. (Exhibit D-4)
- 2) A WV Medical Institute nurse, [REDACTED] completed a Pre-Admission Screening (PAS-2000) on June 19, 2007 in the Claimant's home with the Claimant, her homemaker and case manager present. The Claimant was living with her son and his family at the time. Her son was not present for the review. 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 with twenty three (23) points awarded. (Exhibits D-2 & D-3)
- 3) The Claimant's primary diagnoses listed on the PAS were COPD, PVD, Hyperlipidemia, and Cardiac Arrhythmia. Other medical conditions include anxiety, angina, dyspnea, arthritis, mild Alzheimers, pain, HX of resp. failure, HX of MI with stent placement, pacemaker, and 4 toes left foot amputation. (Exhibit D-2)
- 4) The June 19, 2007 PAS (Exhibit D-2) assigned this Claimant with twenty four (24) points in determining the level of care required. The evaluating nurse assigned seven (7) points in the areas of Medical Conditions/Symptoms (a – angina rest, b – angina exertion, c – dyspnea, d – significant arthritis, h - pain, k – mental disorder, and l (other) – PVD; and eleven (11) points in the area of functional levels. The Claimant was assessed as being physically unable to vacate in the event of an emergency (1 point), needing continuous oxygen under Professional and Technical Care needs (1 point), not being able to administer her medication (1 point), has a diagnosis of Alzheimer's (1 point), and a terminal diagnosis (1 point). It was noted that the Claimant was initially assessed as level 2 (supervised/assistive device) for walking in the area of functional levels. After additional information was received from the Claimant's physician, this was changed to level 3 (one person assist). Testimony from the BoSS representative revealed that a point should have been awarded for Stage 1 decubitus under #24. The total points assigned were twenty four (24) which was Level of Care C. This equates to 124 homemaker hours per month. It is noted on the PAS "discussed completed PAS with those present and gave opportunity for questions. Those present voiced agreement with PAS".
- 5) The issues contested in the hearing were in the area of bladder/bowel incontinence. The PAS reads in part: Bowel – per HM and client has incontinence of bowel 2 to 3 times per week. Wears pads. Bladder – per client and HM has incontinence of urine 2 to 3 times per week. The WVMI nurse noted on 07/28/2007 the following: Additional information received from Dr. [REDACTED] in response to letter. Client was given level 2 for she does have incontinence of urine 2 to 3 times per week and per doctor she has "some incontinence of urine". Client was already given level 3 for transfers which means she requires physical assistance. Walking was changed to level 4 due to changes in her ability to ambulate due to post amputation pain and arthritic pain. (Exhibit D-2)
- 6) Testimony from the Claimant's witnesses revealed that she has bladder/bowel incontinence at least three times per week. The Claimant was issued a prescription for

blue pads and Poise pads for stress incontinence in April 2007. (Exhibit C-1)

- 7) It is the Department's position that stress incontinence caused by coughing or intense laughter is not what the state considers true incontinence. That is not the same as not knowing when you are going to void and one has a full voiding.
- 8) Testimony from the Homemaker RN revealed that the Claimant wets every night. They get the blue pads for her to keep the bed dry. She has been the Homemaker RN since October 2006.
- 9) Testimony from the case manager revealed that she was present for the assessment. The case manager denied that she indicated to the WVMI nurse that she agreed with the findings the day of the assessment. She was under the impression that if the PAS indicated incontinence three (3) times per week that would be marked down. It was not stated the Claimant was incontinent less than three times a week or two more than three times per week. She was assuming the Claimant was going to get incontinence.
- 10) Testimony from the Claimant's son and LS revealed the Claimant has bladder/bowel incontinence more than three times per week.
- 11) Aged/Disabled Home and Community-Based Services Manual Section 503 – Member Eligibility and Enrollment Process:

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.

- 12) Aged/Disabled Home and Community-Based Services Manual Section 503.1.1 –

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.

13) Aged/Disabled Home and Community-Based Services Manual Section 503.2 – 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 2000)
- B. Unable to vacate a building- In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. A) independently and b) With Supervision are not considered deficits. (Item#25 on PAS-2000)
- C. Functional abilities of individual in the home. (Item 25 on the PAS 2000).
  - 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 incontinent of (e) bowel and/or (f) bladder)
  - Orientation-- Level 3 or higher (totally disoriented, comatose)
  - Transfer----- Level 3 or higher (one person or two person assistance in the home)
  - Walking----- Level 3 or higher (one person assistance 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 27 on the PAS 2000)
- E. The individual is not capable of administering his/her own medications. (#28 on the PAS-2000)

14) Aged/Disabled Home and Community Based Service Manual # 503.2.1 & 503.2.2.:

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 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 1 point Decubitus
- #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 for Alzheimer's or other dementia

#35 Prognosis – 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 which is for 124 hours per month in homemaker services. The case was assigned 24 points, which falls within the Level C of care.
- 2) The State Hearing Officer finds the testimony from the Claimant's witnesses credible that the Claimant does have incontinence of the bladder/bowel (#26 e and #26 f) at least three times per week. This would be Level 3 (incontinent) on the PAS-2000. Two additional points will be added to the level of care point total.
- 3) There is a total of twenty six (26) points assigned to the Claimant. Twenty six (26) points is level of care D which equates to 155 service hours per month.

**IX. DECISION:**

After reviewing the information presented during this hearing and the applicable policy and regulations, it is the finding of the State Hearing Officer that the Department has incorrectly determined the Claimant's level of care according to the information found on the PAS-2000 form dated June 19, 2007. The Department is reversed in the decision to reduce the number of service hours to 124 under the Aged/Disabled Home and Community-Based Services Waiver Program. The action described in the notification letter dated June 22, 2007 will not be taken.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 7th Day of September, 2007.**

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**Margaret M. Mann  
State Hearing Officer**