

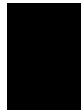


State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 970  
Danville, WV 25053

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

August 1, 2007



Dear Mr. 

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 22, 2007. 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 (ADW) Program, the number of homemaker service hours is determined based on the 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 503.2)

Information submitted at your hearing reveals that your condition at the time of your Pre Admission Screening qualifies for the degree of care and services offered under the Level C of Care under the ADW program.

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 from Level C to Level B.

Sincerely,

Cheryl McKinney  
State Hearing Officer  
Member, State Board of Review

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



Nisar A. Kalwar, BMS



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

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**Claimant,**

v.

**Action Number: 06-BOR-3283**

**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, 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 convened on June 22, 2007 on a timely appeal filed November 17, 2006.

It should be noted that the Claimant's benefits have 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  
[REDACTED], Attorney, [REDACTED]  
[REDACTED], intern  
[REDACTED], homemaker  
Claimant's mother  
[REDACTED], RN, [REDACTED]  
[REDACTED], Case Manager, [REDACTED]

Department's Witnesses:

Nisar A. Kalwar, Attorney, BMS, by speakerphone  
Kay Ikerd, Bureau of Senior Services, BoSS, by speakerphone  
[REDACTED], RN, WVMI, by speakerphone

Presiding at the hearing was Cheryl McKinney, 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 503.2, 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 Sections 503.2, 503.2.1, 503.2.2
- D-2 Pre-Admission Screening (PAS) assessment completed on October 2, 2006
- D-3 Eligibility Determination dated October 2, 2006
- D-3 Notice of reduction in benefits dated November 8, 2006

**Claimant's Exhibits:**

- C-1 Letter from Dr. [REDACTED] dated June 7, 2007

- C-2 Note from Dr. [REDACTED] dated November 15, 2006
- C-3 Physician's notes dated September 5, 2006
- C-4 RN Assessment form dated August 11, 2006

## VII. FINDINGS OF FACT:

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter ADW, was undergoing an annual reevaluation to verify continued medical eligibility in October 2006.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (PAS) Pre-Admission Screening form (D-2) on October 2, 2006 and determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse indicated on the form the Claimant was listed as having severe aphasia secondary to gunshot wound, seizures secondary. Other medical conditions requiring services were listed as brain damage secondary to gunshot wound to head, spasticity secondary to brain injury, severe DJD (degenerative joint disease), mild severe hyperlipidemia, mild HTN, prognosis is not good in that he will probably not improve beyond present status. The WVMI nurse assigned 16 points in her evaluation of the level of care the claimant requires.
- 3) Four (4) points were assessed for Medical Conditions and Symptoms. One (1) point was assessed for ability to vacate a building. Nine (9) points were assessed in the area of functional abilities in the home. One (1) point was assessed for medication administration. One (1) point was assessed for Alzheimer's related condition. A total of sixteen (16) points were assessed during the screening.
- 4) Witnesses for the Claimant raised issues in the following areas:

**Arthritis and Contractures**, which are under Medical Conditions/Symptoms: The Claimant was assessed no points for these medical conditions. Evidence was presented (C-1) in the form of a letter from the Claimant's physician to support he has had arthritis and contractures since before January 24, 2006. Testimony was provided to indicate the Claimant is prescribed Naprosen for his arthritis condition. The Claimant's mother testified that at the time of the Pre-Admission Screening in October 2006 the Claimant had been taken off most medications to re-evaluate what he needed; however, he was placed back on the arthritis medication.

**Vacating a Building**, which is under question number twenty five (25): The Claimant was assessed as being able to vacate a building in the event of an emergency "with supervision". Evidence was presented (C-1) in the form of a letter from Claimant's physician indicating the doctor assesses him as being unable to evacuate a building in the event of an emergency due to his mental status. The Claimant's mother testified that the reason he cannot vacate on his own is due to the fact that his medications cause him to be groggy, and he is easily disoriented. The Pre-Admission Screening (D-1) lists some of the Claimant's behaviors as combative, bizarre behavior, displays inappropriate social behavior, verbally abusive, and severe challenging behavior.

**Walking**, which is under Functional Levels: The Claimant was assessed as needing

“supervised/assistive device”. Evidence was presented to indicate the Claimant needs “one person assist” periodically due to the fact that he has one leg shorter than the other, has a stagger gait and bumps into walls and furniture often. The Claimant’s mother testified that he needs one-person assistance often. The Pre-Admission Screening form (D-1) indicates the mother held onto the Claimant’s arm to ambulate from one room to the other, and that at times someone holds on to him to help with walking.

**Vision**, which is under Functional Levels: The Claimant was assessed as having “impaired/correctable” vision. The Pre-Admission Screening form (D-2) indicates Claimant is ‘blind in right eye, wears glasses at time.’[sic] The Claimant’s mother testified that the Claimant has never worn glasses because they have been told his vision is not correctable. The Department had no explanation as to why they recorded that the Claimant wore glasses at times. The Claimant’s eye was damaged due to a gunshot wound and will not improve. The Department testified that they evaluated the Claimant by determining whether the Claimant can compensate for the loss of the right eye by using the left eye, and how much assistance is needed to function in the home.

**Communication**, which is under Functional Levels: The Claimant was assessed as having “impaired/understandable” communication. The WVMi nurse recorded in the nurse’s comments section of the Pre-Admission Screening form (D-2) that the Claimant’s speech was slurred and rapid, and difficult to understand at times. The Claimant’s mother testified that the Claimant has a lot of difficulty speaking clearly and she has problems understanding him. She must ask him often daily to repeat himself, and sometimes cannot understand what he is saying at all.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2.1 and 503.2.2 (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- 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- Decubitis- 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 are 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
- #34- Prognosis- 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 assessment tool.
- 2) The Claimant received 16 points on a PAS completed by WVMi in October 2006 in conjunction with an annual evaluation. For the previous level of care, the Claimant would need at least 18 points.
- 3) Evidence and testimony presented during the hearing supports the need for an additional point to be awarded for each of the areas of arthritis and contractures, for a total of two (2) additional points. Evidence also shows the claimant is unable to vacate a building in the event of an emergency due to mental issues, and should be awarded a point (1) for this area. Evidence and testimony clearly establishes the Claimant requires hands on one person assistance often on a daily basis for walking and is entitled to a point (1) for walking. In the area of vision, the evidence is clear that the Claimant's vision is not correctable and he is entitled to one (1) point for vision. The Claimant's communication has been shown to be poor and sometimes not understandable; therefore the Claimant is entitled to one (1) point for communication.
- 4) The total amount of points assessed amount to twenty two (22), and support the finding of Level "C" for this Claimant.

**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 2<sup>nd</sup> Day of August 2007**

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**Cheryl McKinney**

**State Hearing Officer**