



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

April 26, 2007

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 24, 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 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 WVMI. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual 503.2)

Information submitted at your hearing reveals 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  
BoSS  
WVMI  
CCIL

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

\_\_\_\_,

**Claimant,**

v.

**Action Number: 07-BOR-820**

**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 26, 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 April 24, 2007 on a timely appeal filed February 21, 2007.

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:**

[REDACTED], Claimant's daughter  
[REDACTED], Case Manager, Coordinating Council for Independent Living  
[REDACTED], RN, Ultra Care  
Kay Ikerd, RN, Bureau of Senior Services (participated telephonically)  
[REDACTED], RN, West Virginia Medical Institute (participated 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 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 January 24, 2007
- D-3 Notice of Decision dated February 9, 2007
- D-4 Hearing request

**Claimant's Exhibits:**

- C-1 Information from Dr. [REDACTED] dated February 21, 2007

**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) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on January 24, 2007 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 25 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care "C" (25 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 Level of Care “D”- eligible for five (5) hours per day or 155 hours per month of homemaker services.

- 3) The Claimant was sent notification on February 9, 2007 (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:

**Significant arthritis-** The Claimant’s representatives contended that she has had arthritis since she broke her hip three years ago. The PAS indicates that the Claimant reported having arthritis in her arms, neck, legs and back. The WVMi nurse testified that she telephoned the Claimant’s physician regarding the diagnosis, but received no response and had no documentation verifying the presence of arthritis. In addition, the Claimant reported taking no medication for arthritis.

The Claimant’s representatives provided a statement from Dr. [REDACTED] (C-1) verifying that the Claimant has osteoarthritis and requires pain control as a result of her hip fracture.

*Documentation from Dr. Pondo supports testimony provided by the Claimant’s representatives concerning the arthritis diagnosis. Therefore, one (1) additional point is awarded to the Claimant for significant arthritis.*

**Pain-** The Claimant’s daughter testified that her mother takes pain medication, but failed to provide this information to WVMi. No medication was provided to the WVMi nurse at the time of the assessment, however, the nurse documented that the Claimant takes Tylenol as needed for pain.

*Documentation from Dr. [REDACTED] supports testimony that the Claimant requires pain control as a result of problems stemming from her hip fracture. Therefore one (1) additional point is awarded to the Claimant for pain.*

**Continuous oxygen-** The Claimant’s daughter testified that the Claimant has continuous oxygen, but does not use the oxygen when she has visitors. The WVMi nurse testified that the Claimant reported she uses oxygen at bedtime and as needed.

*No additional points are awarded for continuous oxygen as testimony reveals the Claimant does not use oxygen at all times.*

**Contracture-** The Claimant’s representatives contended that she has a contracture of her right hand. No medical information was presented to verify the presence of a contracture.

*No additional points are awarded for contracture as no documentation was provided to support the existence of a contracture.*

- 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 25 points on a PAS completed by WVMI in January 2007 in conjunction with an annual reevaluation.
- 3) As a result of information presented during the hearing, two (2) additional points are awarded to the Claimant.
- 4) The addition of two (2) points 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 26th Day of April, 2007.**

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**Pamela L. Hinzman  
State Hearing Officer**