



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1400 Virginia Street  
Oak Hill, WV 25901

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

January 13, 2009

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

Dear \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 19, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to reduce your homemaker hours from Level D care to Level C.

In arriving at a decision, the State Hearings 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. Some of these regulations state as follows: 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 Services Waiver Policy and Procedures Manual, §501.3).

The information submitted at your hearing revealed that you continue to meet the medical criteria necessary to receive Level D care.

It is the decision of the State Hearings Officer to **reverse** the decision of the Department to reduce your homemaker hours to Level C.

Sincerely,

Kristi Logan  
State Hearings Officer  
Member, State Board of Review

Cc: Erika H. Young, Chairman, Board of Review  
Bureau of Senior Services  
West Virginia Medical Institute  
Central WV Aging Services

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 08-BOR-2135**

**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 December 16, 2008 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 December 16, 2008 on a timely appeal, filed September 15, 2008.

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  
\_\_\_\_\_, Claimant's Wife  
██████████ Case Manager, Central WV Aging Services  
\_\_\_\_\_, Homemaker

Kay Ikerd, RN, Bureau of Senior Services  
Courtenay Smith, RN, West Virginia Medical Institute

All participants testified by phone.

Presiding at the Hearing was Kristi Logan, 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 or not the Department's decision to reduce Claimant's homemaker hours was correct.

**V. APPLICABLE POLICY:**

Aged/Disabled Waiver Policy and Procedures Manual § 501.3.2.1 and 501.3.2.2

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

**Department's Exhibits:**

- D-1 Aged/Disabled Waiver Policy and Procedures Manual § 501.3.2.1 and 501.3.2.2
- D-2 Pre-Admission Screening Form dated August 20, 2008
- D-3 Medical Necessity Evaluation Request Form dated June 25, 2008
- D-4 Correspondence from Dr. ██████████ dated December 14, 2005
- D-5 Notification Letter dated September 26, 2008

**Claimants' Exhibits:**

None

**VII. FINDINGS OF FACT:**

- 1) Claimant was re-evaluated for the Aged/Disabled Waiver program for continued eligibility on August 20, 2008. A Pre-Admission Screening (PAS) form was completed that date by Courtenay Smith, RN, of the West Virginia Medical Institute (WVMI). Claimant was awarded a total of 24 points on the PAS (D-2).
- 2) A notification letter dated September 26, 2008 was issued and read in part (D-5):

You have been determined medically eligible to continue to receive in-home services under the Aged and Disabled Waiver program. The number of homemaker service hours approved is based on your medical needs, and cannot exceed 124 hours per month.

Claimant's homemaker hours were reduced from Level D care of 155 hours a month to Level C, 124 hours a month. In order for Claimant to continue receiving Level C care, two (2) additional points were required.

- 3) Claimant contested not receiving points under medical conditions/symptoms of dysphagia, angina at exertion and pain and not receiving the maximum points for bladder incontinence. \_\_\_\_\_, Claimant's wife, testified that Claimant gets choked when eating and drinking. She or the homemaker must stay with him while he's eating because of the choking.

\_\_\_\_\_ stated that Claimant's catheter gets stopped up and leaks. She must irrigate it daily to prevent this. \_\_\_\_\_ stated the catheter only leaks when it gets clogged and this happens about three (3) times a month.

- 4) Claimant testified that he chokes every time he eats or drinks. The food or liquid will go down into his lungs and he has to take a breathing treatment to get his lungs cleared. He had an Esophageal Dilatation in 2005 to correct his choking. Claimant stated he had some relief after the procedure was performed but it has worsened since.

Claimant stated he has pain in his heart when he is sitting or lying down and when he is turned over or transferred. Claimant stated the pain is daily.

Claimant stated he has pain in his left should and arm due to his arthritis. He has had the pain for years and takes Advil for it. He does not take any prescription pain medications for pain.

- 5) Ms. Smith testified to reasons why she did not give points for dysphagia, angina at rest, pain or an additional point for bladder incontinence. Claimant was not given a diagnosis of pain or angina at exertion. Claimant only takes over-the-counter medication for pain and takes nitroglycerin for angina at rest. The nitroglycerin is on an as needed basis and is not something that he takes daily. At the assessment, Claimant denied any pain at exertion or significant pain from the arthritis.

Claimant advised Ms. Smith of the Esophageal Dilatation procedure and told her that he did not choke as often as he used to. Ms. Smith did not award a point since the Esophageal Dilatation is a corrective procedure and Claimant reported improvement after it was performed.

Ms. Smith stated \_\_\_\_\_ denied any leakage from Claimant's catheter but did tell her of it clogging up and the need to irrigate it daily.

- 6) Aged/Disabled Waiver Policy Manual § 501.3.2.1 and 5.1.3.2 states points will be awarded as follows:

- #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 - Decubitus- 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
- #35 - 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 provides that an individual's Level of Care (LOC) for the Aged/Disabled Waiver Program is determined by the number of points awarded on the PAS assessment tool. Claimant was awarded 24 points on the August 2008 PAS.
- 2) Credible testimony provided from Claimant and his wife indicated that Claimant does have angina at exertion. Claimant has a diagnosis of angina at rest and it is reasonable that Claimant would have angina with exertion as well. An additional point will be awarded in this area.
- 3) Claimant contends that he has pain from his arthritis. Although Claimant did not have a diagnosis of pain, he has a diagnosis of arthritis. It is only logical that Claimant would suffer from pain from this condition. An additional point will be awarded to Claimant in this area.
- 4) Claimant has 26 points with the addition of points for angina at exertion and pain. Claimant continues to meet the medical criteria for Level D care.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to reduce Claimant's homemaker hours from Level D care to Level C. Claimant will continue to receive Level D care at 155 hours a month.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 13<sup>th</sup> Day of January, 2009.**

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**Kristi Logan  
State Hearing Officer**