



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

June 27, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 17, 2008. 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 WVMI. (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 B of Care under the ADW program.

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

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

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

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

_____,
Claimant,

Action Number: 08-BOR-1123

v.

**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 17, 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 June 17, 2008 on a timely appeal filed March 18, 2008.

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

_____, Homemaker RN, Central WV Aging Services, (CWAS)

_____, Homemaker, CWAS

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services, BoSS, by speakerphone

Sara Carpenter, RN, WV Medical Institute, WVMI, by speakerphone

Presiding at the hearing was Sharon K. Yoho, 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, 503.2.2 and Attachment 14

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 March 12, 2008

D-3 Eligibility Determination dated March 12, 2008

D-4 Notice of reduction in benefits dated March 13, 2008

VII. FINDINGS OF FACT:

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter ADW, was undergoing an annual reevaluation in March 2008 to verify continued medical eligibility.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a Pre-Admission Screening (PAS) assessment (D-2) on March 12, 2008 and determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse assigned 14 points in her evaluation of the level of care the claimant requires. Present at the assessment were the claimant and her homemaker RN from CWAS.

- 3) Four points were assigned for Medical Conditions and Symptoms. One point was assessed for vacating, and nine for functional abilities in the home.
- 4) Witnesses for the Claimant raised issues in the areas of communication, medicating, transferring, walking and bowel incontinence.
- 5) The claimant does have problems with communication due to her Multiple Sclerosis diagnosis. For the most part, she can be understood. If one were not able to look at her while she was talking, it would be harder to understand what she was saying. In the event that she was attempting to communicate an emergency to a person over the phone, she most likely would have to repeat herself to make the emergency understood. This Hearing Officer did have difficulty during the hearing understanding what the claimant was trying to say but was able to understand what she was saying. The evaluating nurse assessed the claimant's communication as being impaired but understandable.
- 6) The nurse was advised at the PAS that the claimant could open her own medicine bottles and fill her reminder boxes. She related that she takes her medicine all at one time and has been late in the day taking them, but she has not totally forgotten to take them. The homemaker testified that she always asks if the claimant has taken her pills and often times finds that she had not taken her medication when she was supposed to. During the PAS, the claimant did not indicate that she needed reminded but did admit to forgetting to take her medication.
- 7) The claimant reported to the evaluating nurse that she could get in and out of chairs and bed if she has something to hold onto. She has a grab bar to use in getting off the toilet and uses gravity to get down off the bed. She reported that it sometimes takes her a few tries, but that she can transfer on her own. The Homemaker testified that she helps the claimant out of her recliner. The homemaker did not observe the claimant transfer or walk.
- 8) The nurse was told at the assessment that the claimant could ambulate within her home by holding onto furniture and walls. She told the nurse that she has started to fall but has caught herself. She said that she had not hurt herself lately. The Homemaker testified that the claimant holds on to her and the walls when she walks in the home. The homemaker was not present during the assessment and the claimant did not indicate that she needed the help of others to ambulate.
- 9) The claimant advised the evaluating nurse that she has daily accidents with her bladder and that she has accidents with her bowels also. She reported the last accident had been on Monday. The PAS was being completed on Wednesday, two days later. She reported that if she is blocked, she has accidents with her bowels. The nurse assessed her as being totally incontinent with bladder and occasional incontinence with bowel. The homemaker RN testified that the claimant has total bowel incontinence. She states that the claimant has to take laxatives regularly and has incontinence with every bowel movement. The RN testified that the claimant only has two or three bowel movements in a week. The claimant testified that there are times that she makes it to the bathroom in time for her bowel movements.

10) 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)
- #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

11) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Attachment 14

Level of Care Functional Abilities

	1	2	3
Communication – not impaired	impaired/understandable	understandable with aids	
Cont/Bowel-	continent	occas. Incontinent (less 3X week)	Incontinent

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 assessed on the PAS assessment tool. The Claimant received 14 points on a PAS completed by WVMI in January 2008 in conjunction with an annual reevaluation. For the previous level of care, "C" the claimant would require at least 18 points.

- 2) Evidence and testimony presented during the hearing, did support that the claimant has difficulty with communication however; to get points for communication, the claimant would need to use an aid for communication. The nurse correctly assessed the claimant's communication as being impaired but understandable and policy does not permit a point for this. Although not every word is understood, the point she is trying to make is understood.
- 3) Evidence and testimony regarding the claimant's ability to walk and transfer supports that the claimant could use some help in these two areas. She however, can transfer and walk on her own with some difficulty. It is understood that the homemaker would assist her with transfer and walking if she were there observing the difficulty the claimant may be having.
- 4) The claimant is able to open her medication bottles and fill her reminder box without the help of others. She can also take her pills out of her boxes and take her medication without the help of others. She may sometimes forget to take her medication early in the day when she is supposed to take it, but she does eventually remember and takes her medication on her own. On the days that the homemaker is there, she does check to make sure the claimant has taken her medication and often finds that the claimant has forgotten. The nurse did not assess the claimant as needing prompting and supervision, which would have assigned a point. Evidence and testimony supports that the claimant does need supervision to ensure that she is properly medicated. An additional point should have been assessed for medicating.
- 5) The evaluating nurse assessed the claimant as being occasionally incontinent with bowel. There was conflicting information given at the hearing regarding bowel incontinence. The homemaker RN contends that the claimant is incontinent with every bowel movement and that she has two or three each week. The claimant contends that she does make it to the bathroom for some of her bowel movements. The nurse correctly assessed occasional incontinence.
- 6) The Department should have assessed 15 points in March, with the addition of a point for medication administration. 15 points remains within the Level of Care "B" and renders the Claimant eligible for (93) hours per month of homemaker services.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** 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 27th Day of June 2008.

**Sharon K. Yoho
State Hearing Officer**