



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

June 11, 2008

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 10, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to deny a request for an increase in your Level of Care.

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: Additional hours can only be requested for members at Level of Care A, B, or C, and only when there is a substantial change in the member's medical condition. Clinical documentation must be submitted to support the need for additional hours (West Virginia Aged/Disabled Waiver Policy Manual § 507.4).

The information which was submitted at your hearing revealed that you do not meet the medical criteria required for Level C care and will remain at Level B care.

It is the decision of the State Hearings Officer to **uphold** the decision of the Department to deny your request for an increase in your Level of Care.

Sincerely,

Kristi Logan  
State Hearings Officer  
Member, State Board of Review

Cc: Erika Young, Chairman, Board of Review  
[REDACTED] Mountain State Home Health  
Kay Ikerd, Bureau of Senior Services

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

\_\_\_\_\_ ,

**Claimant,**

v.

**Action Number: 08-BOR-1188**

**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 10, 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 10, 2008 on a timely appeal, filed February 29, 2008.

**II. PROGRAM PURPOSE:**

The Program entitled Aged and 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  
\_\_\_\_\_, Case Manager, Mountain State Home Health  
\_\_\_\_\_, Homemaker RN, Mountain State Home Health  
\_\_\_\_\_, Homemaker

Kay Ikerd, Bureau of Senior Services, participated by phone  
Pam Pushkin, RN, Bureau of Senior Services, participated 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 the Department's denial of Claimant's request for an increase in Level of Care was correct.

**V. APPLICABLE POLICY:**

West Virginia Aged/Disabled Waiver Policy Manual § 500

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

**Department's Exhibits:**

- D-1 West Virginia Aged/Disabled Waiver Policy Manual § 503.2 and 507.4
- D-2 Pre-Admission Screening Form dated October 18, 2007
- D-3 Notification Letter dated February 18, 2008
- D-4 Hearing Request received February 29, 2008

**Claimants' Exhibits:**

- C-1 None

**VII. FINDINGS OF FACT:**

- 1) Claimant had a Pre-Admission Screening (PAS) form completed at her re-evaluation on October 18, 2007 (D-2). Claimant was awarded deficits in the following areas:

Medical Conditions/Symptoms

- Dyspnea – 1 point
- Significant Arthritis – 1 point
- Diabetes – 1 point
- Mental Disorder – 1 point
- Hypertension – 1 point

Vacate in Emergency – Physically Unable, 1 point

Functional Levels

- Eating – Physical Assistance, 1 point
- Bathing – Physical Assistance, 1 point
- Dressing – Physical Assistance, 1 point
- Grooming – Physical Assistance, 1 point
- Bladder - Occasionally Incontinent, 1 point
- Transferring – Supervised/Assistive Device, 1 point
- Walking – Supervised/Assistive Device, 1 point

Medication Administration – Prompting/Supervision, 1 point

Claimant was given a total of fourteen (14) points making her eligible for Level B care of 93 hours.

- 2) Claimant requested an increase in her Level of Care on February 12, 2008. A denial notification letter dated February 18, 2008 was issued and read in part (D-3):

The request for a change in your level of care under the Medicaid Aged and Disabled Waiver has been denied. Your current level of care is Level B for a total of 93 hours per month. A review of the information submitted resulted in a total of 16 points which does not change your current level of care.

- 3) Pam Pushkin, an RN with the Bureau of Senior Services, testified to the information she reviewed that was submitted with Claimant's request for Level of Care change. Ms. \_\_\_\_\_ was able to award an additional point for pain under Medical Conditions/Symptoms due to a diagnosis of chronic back pain from Claimant's physician, Dr. [REDACTED]. Ms Pushkin also awarded an additional point for partial incontinence of the bowels from information from the RN's assessment. The two (2) additional points gave Claimant a total of 16 points which still falls under Level B care.
- 4) Claimant testified that she has constant pain and has to have carpel tunnel surgery in her left wrist for which she is in physical therapy for. She stated she has a tingling sensation in her legs and has frequent falls. She had been getting more hours under Level C care previously and wishes to have that many hours again.
- 5) West Virginia Aged/Disabled Waiver Policy Manual §507.4 F states:

[A Homemaker RN will] Compile, prepare, and submit material that can be used to assess an Aged/Disabled Waiver (ADW) member's need for additional Homemaker (HM) hours. Additional hours can only be requested for members at Level of Care A, B, or C, and only when there is a substantial change in the member's medical condition. In order to determine whether additional hours are warranted, a completed Request for Level of Care Change must be submitted to Bureau of Medical Services (BMS). Clinical documentation sufficient to support the request must be submitted, which may include applicable test results from a member's physician or hospital discharge summary. These documents must be on the letterhead of the physician and/or hospital and dated no later than one month prior to, or one month following, the request for an increased level of care. Information that will not be considered includes any verbal or telephonic statements; or letters from family, neighbors, friends or case management and homemaker staff without attached physician's documentation or discharge summary.

- 6) West Virginia Aged/Disabled Waiver Policy Manual § 503.2.1 and 503.2.2 states:

There are four levels of care for homemaker services. Points will be determined as follows, based on the following section 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- 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 dictates an individual's Level of Care and homemaker hours by the number of deficits and points awarded on the PAS form. Policy also dictates that an individual can request a Level of Care change when there has been a substantial change in medical condition.
- 2) Claimant was awarded two (2) additional points from the clinical documentation submitted with the request for Level of Care change, for a total of sixteen (16) points. However, sixteen (16) points is still Level B care. Claimant would need two (2) more points to qualify for Level C.
- 3) The documentation submitted for the Level of Care change and the testimony at the hearing failed to demonstrate that Claimant had more deficits than were awarded. Claimant does not meet the medical criteria for an increased Level of Care.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Department's denial of a Level of Care change for the Claimant.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 11<sup>th</sup> Day of June, 2008.**

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**Kristi Logan  
State Hearing Officer**