

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



AND HUMAN RESOURCES

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

October 15, 2008

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 25, 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  
[REDACTED] Council on Aging

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

**BOARD OF REVIEW**

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 08-BOR-1637**

**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 October 15, 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 September 25, 2008 on a timely appeal filed June 27, 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:

[REDACTED], Claimant

[REDACTED] Claimant's Case Manager, [REDACTED] Council on Aging

[REDACTED] Claimant's homemaker, [REDACTED] Council on Aging

Department's Witnesses:

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

Tammy Kessel, RN, WV Medical Institute, WVMI, by speakerphone

[REDACTED] Claimant's representative, WV Legal Aid

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, 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 June 11, 2008

D-3 Eligibility Determination dated June 11, 2008

D-4 Notice of reduction in benefits dated June 20, 2008

### **VII. FINDINGS OF FACT:**

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter ADW, was undergoing an annual reevaluation in June 2008 to verify continued medical eligibility and level of care required.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a Pre-Admission Screening (PAS) assessment (D-2) on June 11, 2008 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant's previous level of care was a level C. The WVMI nurse assigned 15 points in her evaluation of the level of

care the claimant requires which equates to a level of care B. Present at the assessment were the claimant, her case manager and her homemaker.

- 3) Five points were assigned for Medical Conditions and Symptoms, eight for functional abilities in the home, one point for medication administration and one for Dementia/Alzheimers related condition.
- 4) The Claimant's witnesses raised issues in the areas of vacating in the event of an emergency, orientation, eating, walking and the use of a wheelchair.
- 5) When the evaluating nurse asked the Claimant if she could get out in the event of an emergency, the Claimant said, "I could get out." The nurse observed the Claimant ambulate to the bathroom and leave her walker outside the bathroom to continue without the walker. She assessed the Claimant as being able to vacate in the event of an emergency. The Case Manager nor homemaker made any comments about this during the assessment or during the review of the assessment. Testimony given by the Case Manager indicates that the Claimant needs one-person assistance to vacate the home in normal situations. The Homemaker testified that she knows that the Claimant could not get out in the event of an emergency.
- 6) The evaluating nurse assessed one point for orientation to indicate that the Claimant is occasionally disoriented. The nurse was advised that the Claimant is confused at times. The Claimant is diagnosed with mild dementia. The Claimant is not totally disoriented to person place and time.
- 7) The Claimant advised the nurse that she does not have trouble using a knife, fork and spoon and that she could cut her own food. The nurse noted that the Claimant had strong and equal bilateral handgrip. She therefore assessed the Claimant as being able to eat independently. The homemaker testified that she prepares all meals and cuts the Claimant's food. The Claimant testified that she can cut her own food, but it has been a long time since she has done so.
- 8) The does ambulate without assistance from others. She uses an assistive device and was assessed at a level 2 due to the use of a walker to ambulate. Witnesses testified that there are days when the Claimant must use her wheelchair and other have to wheel it. The evaluating nurse was advised at the assessment that the wheelchair was not used in the home. The Claimant's witnesses testified that the day of assessment was a good day for the Claimant and she was able to walk without the assistance of other or her wheelchair on that day.
- 9) 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

### **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 15 points on a PAS completed by WVMI in June 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, at the time of the PAS, required a level B of care however one additional point should have been assessed in the areas of vacating in the event of an emergency. Due to the Claimants limitations in ambulating and her mild dementia, it is unlikely that she could successfully vacate in the event of an emergency without the help of others.
- 3) Evidence and Testimony support the assessment received in the areas of orientation, eating, walking and the need for other to wheel her wheelchair in the home. She is only disoriented on occasionally, which is how she was assessed. She is able to cut her own food although others may do this for her. At the time of the PAS, the Claimant could clearly ambulate independent of others and did not demonstrate the need for a wheelchair in the home.

### **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 15th Day of October 2008.**

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**Sharon K. Yoho  
State Hearing Officer**