



**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

March 4, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 29, 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 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 "C" rating. As a result, you are eligible to receive four (4) hours per day or 124 hours per month of homemaker services.

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.

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-2635

**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 March 4, 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 February 29, 2008 on a timely appeal filed December 19, 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
[REDACTED] Homemaker, Panhandle Support Services
[REDACTED] acting Case Manager, Coordinating Council for Independent Living

Participating telephonically

Kay Ikerd, RN, Bureau of Senior Services
Heather Randolph, RN, West Virginia Medical Institute

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 November 13, 2007
- D-3 Notice of Decision dated November 15, 2007
- D-4 Hearing request

VII. FINDINGS OF FACT:

- 1) The Claimant, a recipient of Aged/Disabled Waiver (ADW) Medicaid benefits, 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 November 13, 2007 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 23 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care "C" - 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 November 15, 2007 (D-3) advising her of the proposed reduction in homemaker service hours.
- 4) The Claimant’s representatives contended that additional points should be awarded in the following areas:

Orientation- The Claimant testified that she has memory problems, becomes confused and does not feel safe when she is home alone. She testified that she does not remember talking to the WVMI nurse on the date of the assessment. The Claimant’s homemaker testified that the Claimant has become increasingly confused since January 2008 and suffers from seizures.

The WVMI nurse testified that the Claimant was alert and fully oriented, denied any periods of disorientation to place or time, and answered questions appropriately during the assessment. The Claimant had indicated, however, that she has become confused since suffering a head injury.

While the Claimant’s condition may have worsened since the PAS was completed, testimony reveals that she was oriented on the date of the assessment. Evidence is insufficient to support the awarding of a point for intermittent disorientation.

Total care with bathing, dressing and grooming- While the Claimant’s acting case manager indicated she should be considered as requiring total care with bathing, dressing and grooming, no specific testimony/evidence was offered to support this contention. The Claimant’s homemaker stated that she helps her “do everything” in the areas of bathing, dressing and grooming. The Claimant was rated as requiring physical assistance in these areas on the PAS assessment.

As no specific testimony was offered to support a finding of total care with bathing, dressing and grooming, no additional points can be awarded in these areas of functionality and the rating of physical assistance is appropriate.

Wheeling- The Claimant’s case manager indicated that she should be rated as requiring total assistance with wheeling (Level 4). The Claimant testified that if she falls when she is alone, she must lay on the floor until someone arrives to assist her. She also testified that she cannot push herself in a wheelchair because her arms are too weak.

As the Claimant was rated as requiring situational assistance (Level 3) on the PAS and received the maximum number of points (2) that can be awarded in the area of wheeling, no additional points are available in this area.

- 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 was awarded 23 points as the result of a PAS completed by WVMI in November 2007 in conjunction with her annual medical evaluation.
- 3) No additional points are awarded to the Claimant as a result of testimony presented during the hearing.
- 4) The Claimant's total number of points remains at 23, which is indicative of a Level of Care "C" and renders the Claimant eligible for four (4) hours per day or 124 hours per month of homemaker service hours.

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 3rd Day of March, 2008.

**Pamela L. Hinzman
State Hearing Officer**