



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

May 15, 2008

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 6, 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  
CCIL

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

\_\_\_\_\_,  
**Claimant,**

**v. Action Number: 08-BOR-749**

**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 May 6, 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 May 6, 2008 on a timely appeal filed January 25, 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  
\_\_\_\_\_, Claimant's daughter  
\_\_\_\_\_, Case Manager, Coordinating Council for Independent Living, CCIL  
\_\_\_\_\_, Homemaker RN, Visiting Angels  
\_\_\_\_\_, Homemaker, Visiting Angels

#### Department's Witnesses:

Jennie Sutherland, Bureau of Senior Services, BoSS  
Heather Randolph, RN, WV Medical Institute, WVMI,

Presiding at the hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

All participants appeared by speakerphone

### **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 January 8, 2008  
D-3 Eligibility Determination dated January 8, 2008  
D-4 Notice of reduction in benefits dated January 15, 2008

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

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter ADW, was undergoing an annual reevaluation in January 2008 to verify continued medical eligibility.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a Pre-Admission Screening (PAS) assessment (D-2) on January 8, 2008 and determined that the Claimant

continues to meet the medical eligibility criteria. The WVMI nurse assigned 15 points in her evaluation of the level of care the claimant requires. Present at the assessment were the claimant, her daughter and her case manager.

- 3) Five points were assigned for Medical Conditions and Symptoms. One point was assessed for vacating, seven for functional abilities in the home, one for medication administration and one for Dementia/Alzheimer's related condition.
- 4) Witnesses for the Claimant raised issues in the areas of decubitis, eating, incontinence, orientation, and vision.
- 5) The claimant does not have any decubitis. She does suffer with fungal infections and occasional thrash.
- 6) The nurse was advised at the PAS that the claimant could cut all of her food. The daughter and case manager did not dispute this at the time of the PAS. The homemaker testified that she always cuts the claimant's meat.
- 7) At the time of the PAS the evaluating nurse was told in detail, why the claimant was no longer having problems with incontinence. The claimant had been put on new medication that helped the problem. The daughter testified that she believed the problem was gone because she did not smell urine any longer when entering the home. She reports that this is due to the good job the homemaker is doing keeping things clean. She indicates that the problem did improve after the new medication. The homemaker RN testified that the claimant has bladder incontinence 3 or 4 times a week. The homemaker testified that she has to clean soiled underwear 2 times a week.
- 8) The nurse assessed one point for occasional disorientation. The claimant's witnesses do not believe that the claimant is totally disoriented, however it takes much effort to get her to answer questions appropriately.
- 9) The claimant has Glaucoma and this information was not given to the nurse at the assessment. The nurse assessed the claimant's vision to be impaired but correctable as she can see to watch TV and can read large print with some difficulty.
- 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	4
Vision -	not impaired	impaired/correctable	impaired/not correctable	blind
Incontinence-	continent	occasional incont. (less 3X week)	Incontinence	blind catheter

**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 assessed on the PAS assessment tool.
- 2) The Claimant received 15 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.
- 3) Evidence and testimony presented during the hearing, did not support that the Claimant has a decubitis. It does not support that the claimant is totally disoriented. The assessment was correct in both of these areas.
- 4) Evidence and testimony regarding the claimant's ability to eat without hands on assistance supported the evaluating nurse's assessment. The persons participating in the assessment reported that the claimant could cut all of her food. The homemaker testified that she cuts the claimant's meat. The testimony did not indicate that the claimant could not cut her own meat if the homemaker did not cut it for her.
- 5) The claimant has some urine incontinence which is more than was reported at the assessment. Testimony and evidence did not support that the incontinence was more than occasional. Occasional incontinence would result in one point being assessed and the evaluating nurse did not assign any points for incontinence.
- 6) The claimant's witnesses testified that the claimant has a diagnosis of glaucoma. This diagnosis was not provided to the department and the nurse properly assessed vision as impaired but correctable. Had this diagnosis been confirmed by a physician, the nurse may have been able to assess differently.

- 7) The Department should have assessed 16 points in June, with the addition of a point for incontinence. 16 points remains in 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 15st Day of May 2008.**

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**Sharon K. Yoho  
State Hearing Officer**