



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

July 16, 2008

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

Dear Mr. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 15, 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 WVM. (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 **reverse** 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  
CWWAS

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

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

v. **Action Number: 08-BOR-856**

**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 July 16, 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 July 15, 2008 on a timely appeal filed February 14, 2008. The appeal was received by the Hearing Officer on March 7, 2008 and was originally scheduled for May 20, 2008, however it was rescheduled at the Claimant's request.

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
- \_\_\_\_\_, Claimant's mother
- \_\_\_\_\_, Claimant's step-father
- \_\_\_\_\_, Case Manager, Central West Virginia Aging Services
- \_\_\_\_\_, RN, Mountain Cap

*Participating telephonically*

- Kay Ikerd, RN, Bureau of Senior Services
- Betsy Carpenter, 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 January 15, 2008
- D-3 Notice of Decision dated January 28, 2008
- D-4 Letter from Dr. [REDACTED] dated April 24, 2008
- D-5 Hearing request

**VII. FINDINGS OF FACT:**

- 1) The Claimant, a recipient of Aged/Disabled Waiver (ADW) Medicaid benefits, underwent an annual reevaluation to verify continued medical eligibility.
- 2) The West Virginia Medical Institute (WVMI) Nurse completed a medical assessment (D-2) on January 15, 2008 and determined that the Claimant continues to meet the medical eligibility

criteria. The Claimant was assigned 16 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care “B” - eligible for three (3) hours per day or 93 hours per month of homemaker services. It should be noted that the Claimant previously qualified as a Level of Care “C”- eligible for four (4) hours per day or 124 hours per month of homemaker services.

*During the hearing, the Department conceded one (1) additional point for the medical condition “pain,” bringing the Claimant’s total number of points to 17.*

- 3) The Claimant was sent notification on January 28, 2008 (D-3) advising him of the proposed reduction in homemaker service hours.
- 4) The Claimant and his witnesses contend that additional points should be awarded in the following areas:

***Medical conditions of contracture (1 point), dyspnea (1 point), significant arthritis (1 point) and dysphagia (1 point)-*** The Mountain Cap Nurse testified that the Claimant has each of these conditions and that this information was reported to the WVMI Nurse during the assessment. PAS comments verify that the information was reported, however the WVMI Nurse testified that the diagnoses could not be verified. She testified that she attempted to contact the Claimant’s physician to verify the diagnoses, but the nurse with whom she spoke did not confirm the information. The WVMI Nurse stated that she is required to confirm diagnoses before awarding points under the “medical conditions/symptoms” section of the PAS. The Claimant’s witnesses testified that he had been in the process of switching physicians at the time the PAS was completed.

Exhibit D-4, a letter from Dr. [REDACTED] dated April 24, 2008, confirms the diagnoses and the Mountain Cap Nurse testified that all of the conditions were present in January 2008 when the PAS was completed. The BoSS Nurse contended that this information was provided in an untimely manner.

*Based on information presented during the hearing, four (4) additional points are awarded to the Claimant for the conditions of contracture, dyspnea, significant arthritis and dysphagia. These conditions were reported during the assessment and the Claimant’s physician has provided written confirmation of the diagnoses. In addition, policy does not require that medical conditions/symptoms be confirmed by a physician.*

***One-person physical assistance with walking (1 additional point) and one-person physical assistance with transferring (1 additional point) -*** The Mountain Cap Nurse testified that the Claimant requires situational assistance with opening doors because he walks with a cane. She testified that the Claimant’s step-father assists him outside of the home.

The WVMI Nurse testified that the Claimant’s step-father denied providing assistance to the Claimant with walking and transferring inside of the home, therefore the Claimant was not awarded additional points for physical assistance with ambulation and transfers. The Claimant had received points for walking/transferring with the use of an assistive device.

*Based on information provided during the hearing, no additional points are awarded in the areas of one-person assistance with walking and transferring as the Claimant's step-father provides this assistance outside of the home environment.*

- 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)
- #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 17 points as the result of a PAS completed by WVMI in January 2008 in conjunction with his annual medical evaluation.
- 3) As a result of information presented during the hearing, four (4) additional points are awarded to the Claimant based on the conditions of contracture, dyspnea, dysphagia and significant arthritis.
- 4) The addition of four (4) points brings the Claimant's total number of points to 21, 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 **reverse** 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 16<sup>th</sup> Day of July, 2008.**

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**Pamela L. Hinzman  
State Hearing Officer**