



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

June 13, 2008

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 12, 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 "B" rating. As a result, you are eligible to receive three (3) hours per day or 93 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  
Mountain Heart Community Services

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

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

**v. Action Number: 08-BOR-908**

**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 13, 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 12, 2008 on a timely appeal filed February 21, 2008. The appeal was received by the Hearing Officer on March 18, 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  
\_\_\_\_\_, Case Manager, RN, Mountain Heart Community Services (MHCS)  
\_\_\_\_\_, Case Manager, MHCS  
\_\_\_\_\_, Homemaker, Mountain Cap

*Participating telephonically*  
Kay Ikerd, RN, Bureau of Senior Services  
Stephanie Schiefer, 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 9, 2008
- D-3 Notice of Decision dated February 15, 2008
- D-4 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 9, 2008 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 17 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.

- 3) The Claimant was sent notification on February 15, 2008 (D-3) advising her of the proposed reduction in homemaker service hours.
- 4) The Claimant and her witnesses contend that additional points should be awarded in the following areas:

***Bladder and bowel incontinence-*** The Claimant's homemaker testified that the Claimant is incontinent of bladder two to four times per week and incontinent of bowel two to three times per week. She testified that the Claimant's incontinence is becoming more frequent. The homemaker could not recall, however, if the accidents were occurring as frequently in January 2008, the month the PAS was completed.

The WVMi Nurse testified that the Claimant reported incontinence of bladder an estimated two times per week and denied loss of bowel control during the assessment. Therefore, she was rated as being occasionally incontinent of bladder and continent of bowel. The Claimant's Case Manager contended that the Claimant and her homemaker had been confused about the purpose of the WVMi Nurse's visit and had believed the nurse was evaluating the Claimant for possible nursing home placement. As a result, he contended that the Claimant and homemaker became fearful and overstated the Claimant's abilities. The Claimant was originally denied ADW benefits when the assessment was completed in January 2008, however the WVMi Nurse made several changes to the PAS as a result of additional information provided by Dr. [REDACTED]. The doctor had written that the Claimant has bladder incontinence issues, however, the letter did not specify the frequency of the Claimant's accidents. Therefore, no additional deficit was awarded for incontinence.

*Because the frequency of the Claimant's incontinence as of January 2008 cannot be determined, no additional points can be awarded for incontinence of bowel or bladder.*

***Orientation-*** Witnesses for the Claimant testified that the Claimant has dementia and cannot recall the day of the week at times.

The WVMi Nurse testified that the Claimant denied disorientation during the assessment and was aware of her location, date of birth and Social Security number when questioned. As a result, the Claimant was determined to be oriented.

*No additional point can be awarded for lack of orientation as the Claimant was reportedly oriented on the date of the assessment.*

***Inability to administer medication-*** The Claimant's homemaker reported that she sets up the Claimant's pill box so that she will remember to take her medication on weekends. She indicated that the Claimant has forgotten to take her medication at times and that she places pills on the table or in the Claimant's hand. The homemaker reported, however, that she did not assist the Claimant in this manner in January 2008.

PAS comments indicate that the Claimant had reported managing her own medication on the date of the assessment and her homemaker denied providing assistance in this area.

*Since the homemaker testified that she did not assist the Claimant with medication administration in January 2008, no additional deficit can be awarded 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)
- #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 her annual medical evaluation.
- 3) As a result of information presented during the hearing, zero (0) additional points are awarded to the Claimant.
- 4) The Claimant's total number of points remains at 17, which is indicative of a Level "B" Level of Care. This renders the Claimant eligible for three (3) hours per day or 93 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 13<sup>th</sup> Day of June, 2008.**

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**Pamela L. Hinzman  
State Hearing Officer**