



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

Patsy A. Hardy, FACHE, MSN, MBA  
Cabinet Secretary

February 12, 2010

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 4, 2010. 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 501.3)

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  
[REDACTED]

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

-----,

**Claimant,**

v.

**Action Number: 09-BOR-2284**

**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 February 12, 2010 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 telephonically on February 4, 2010 on a timely appeal filed November 20, 2009.

It should be noted that the Claimant's benefits have continued pending a hearing decision.

**II. PROGRAM PURPOSE:**

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, [REDACTED]  
-----, Homemaker RN, [REDACTED]  
-----, Service Coordinator, [REDACTED]  
-----, Homemaker, [REDACTED]  
Kay Ikerd, RN, Bureau of Senior Services  
Teresa McCallister, 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. QUESTION TO BE DECIDED:**

The question 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 501.3.2.1 and 501.3.2.2

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 501.3.2.1 and 501.3.2.2
- D-2 Pre-Admission Screening (PAS) assessment completed on October 8, 2009
- D-3 Notice of Decision dated November 10, 2009

**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 for the program.
- 2) West Virginia Medical Institute (WVMI) Nurse Susan McCallister completed a Pre-Admission Screening (PAS) medical assessment (D-2) on October 8, 2009 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 for 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 10, 2009 (D-3) advising him of the proposed reduction in homemaker service hours.
- 4) The Department conceded one (1) point to the Claimant during the hearing for the documented medical condition of significant arthritis. This brought the Claimant's total number of points to 24.
- 5) Witnesses for the Claimant contended that the Claimant should receive additional points for one-person assistance with walking and situational assistance with wheeling. It should be noted that the Claimant was assessed at a Level 2 in walking (supervised/assistive device) and at Level 3 in wheeling (situational assistance). The Bureau of Senior Services (BoSS) Nurse testified that the Claimant can only receive points for situational assistance with wheeling if he is rated as a Level 3 or more in walking (at least one-person assistance). The BoSS Nurse testified that the Claimant should not have been rated as requiring situational assistance with wheeling on the PAS because his rollator walker is not considered a wheelchair.

The Claimant's Homemaker testified that the Claimant loses his balance and she walks behind his rollator walker when he ambulates. While she said she does not provide hands-on assistance with walking, she indicated that she provides physical assistance to the Claimant with transfers and with getting to his walker. The Claimant testified that he ambulates with his walker, that he normally keeps the walker close to him, and that he utilizes the walker when no one is with him in the residence.

The WVMi Nurse testified that she observed the Claimant walk about 15 feet with his rollator walker unassisted on the date of the assessment and that the Claimant reported he does not get up when he is alone because he loses his balance easily. The nurse indicated that the Claimant tripped on the rug while getting back into his chair and reported that he sits on his walker seat when he is tired. According to PAS notes, the Claimant and his homemaker reported that the Claimant would be mentally and physically unable to vacate his home in the event of an emergency because he would require assistance with walking and experiences episodes of disorientation. The WVMi Nurse testified that her assessment of the Claimant's inability to vacate was based primarily on his mental incapacities.

- 6) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Sections 501.3.2.1 and 501.3.2.2 (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 obtained on the PAS assessment tool.
- 2) The Claimant was awarded 24 points as the result of a PAS completed by WVMI in October 2009 in conjunction with his annual medical evaluation.
- 3) As a result of information presented during the hearing, no additional points can be awarded. The Claimant received a deficit for physical assistance with transfers and testimony provided during the hearing indicates that the Claimant uses a rollator walker for ambulation. While the Claimant's homemaker indicated that she has helped the Claimant to his walker, she testified that she walks behind him once he transfers into the walker and does not offer him hands-on assistance with ambulation once in the walker. Because walking has not been elevated to Level 3 (one-person assistance), no additional points can be awarded.
- 4) The Claimant's total number of points remains at 24, rendering him eligible to receive a Level "C" Level of Care.

**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 12th Day of February 2010.**

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**Pamela L. Hinzman**  
**State Hearing Officer**