



**State of West Virginia**  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
**Office of Inspector General**  
**Board of Review**  
**235 Barrett Street**  
**Grafton WV 26354**  
**June 29, 2005**

**Joe Manchin III**  
**Governor**

**Martha Yeager Walker**  
**Secretary**

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 13, 2005. Your hearing request was based on the Department of Health and Human Resources' determination concerning Level of Care (monthly hours of care services) under the Medicaid Title XIX (Home & Community-Based) Waiver 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.

One of these regulations specifies that for the Aged/Disabled Waiver Program, hours of service are determined based on an evaluation of the Pre-Admission Screening Form (PAS). A ~~A~~Level of Care~~@~~ is determined by a point system. Points are derived from medical conditions and deficits set forth in the PAS. Program services are limited to a maximum number of units/hours that are determined by the PAS which is completed, reviewed and approved by WVMI. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual 570.1-570.1. d)

The information which was submitted at the hearing revealed that as a result of your most recent medical evaluation (PAS), the agency determined your ~~A~~Level of Care~~@~~ as **B** or 93 hours maximum per month. Evidence offered failed to establish additional deficits present at the time of the evaluation.

It is the decision of the State Hearing Officer to **uphold** the determination of the Agency as set forth in the January 25, 2005 notification. The agency=s determination that you qualified for a B Level of Care at the time of the November 22, 2004 evaluation was correct and in compliance with policy. Please see section IX of the attached decision.

Sincerely,

Ron Anglin  
State Hearing Examiner  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Libby Boggess, RN, Bureau of Senior Services (BoSS)  
Oretta Keeney, West Virginia Medical Institute (WVMI)  
[REDACTED] CM, Coordinating Council for Independent Living (CCIL)

## **WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES**

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

**Action Number 05-BOR- 4741**

**v.**

**West Virginia Department of Health and Human Resources,  
Respondent.**

### **DECISION OF THE STATE HEARING OFFICER**

#### **I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on June 29, 2005 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 originally convened on May 13, 2005 on a timely appeal received by the Board of Review March 22, 2005. It should be noted that services under the Medicaid Title XIX Waiver (HCB) Program have continued. All persons giving testimony were placed under oath.

#### **II. PROGRAM PURPOSE:**

The Program entitled Medicaid Title XIX Waiver (HCB) 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] homemaker  
[REDACTED] CM/CCIL

Kay Ikerd, RN, BoSS (by phone)

Kem Honaker, RN, WVMI (by phone)

Presiding at the hearing was Ron Anglin, State Hearing Examiner 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 their determination concerning Level of Care (hours of care) under the Medicaid Title XIX Waiver (HCB) Program?

### **V. APPLICABLE POLICY:**

Aged/Disabled and Community-Based Services Waiver Policy Manual ' 570.1- 570.1, d.

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

- E-1 A/D Waiver Manual 570.1, c and 520.2- 3 and 580- 580.3
- E-2 WVMI Independent Review (PAS) completed 11/22/04
- E-3 Notification, 1/25/05
- E-4 Medicaid Program Instruction MA-04-61

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

(1) The claimant is an active recipient of Aged/Disabled Home and Community-Based Waiver Services. As a result of an annual evaluation (E-2) completed by WVMI on November 22, 2004 WVMI determined that the claimant=s Level of Care to be B or 93 hours- a reduction from level C. Notification was provided January 25, 2005 (E-3). A hearing was requested by the claimant February 8, 2005. This hearing was convened May 13, 2005.

(2) The Agency acknowledged a total of 17 points in determining a "Level of Care" based on the evaluation of November 22, 2004.

(3) Testimony reveals that while claimant only began using continuous oxygen recently - for the past week or so, she used oxygen only "as needed" at the time of the November 22 evaluation.

(4) The Agency asserted that they do not consider requests from case management

agencies for additional hours of care while a case is in hearing status.

(5) Policy contained in the Aged/Disabled Home and Community-Based Services Waiver Policy Manual 570.1 and 570.1.d reveals that there are four levels of care for clients of ADW Homemaker services. Points will be determined as on the basis of the number and degree of the individual's functional deficits.

### **VIII. CONCLUSIONS OF LAW:**

Based on policy (in # 5 above) requiring a specific number and degree of functional deficits for the assignment of point to arrive at the Level of Care, evidence reveals the claimant was awarded a total of 17 points based on the evaluation of November 22, 2005 which resulted in a B "Level of Care". No additional evidence or testimony was provided to establish that there were deficits present at the evaluation which were not properly considered.

### **IX. DECISION / DISCUSSION:**

The Agency's determination as set forth in the January 25, 2005 notification is **upheld**.

Testimony provided during the hearing suggests that in the past several weeks the claimant has required continuous oxygen. This occurrence results in the potential for an additional point in the category of "Professional Technical" Needs". The case management agency and claimant are advised, if deemed appropriate, to initiate a proper request for additional hours of care entailing a current evaluation by the West Virginia Medical Institute.

### **X. RIGHT OF APPEAL**

See Attachment.

### **XI. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

**Entered this 29<sup>th</sup> Day of June, 2005**

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**RON ANGLIN**  
**State Hearing Examiner**