



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 10, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 6, 2006. 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 your 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 520 & 570.1)

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 "D" rating. As a result, you are eligible to receive five (5) hours per day or 155 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  
CCS

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 06-BOR-1260**

**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 10, 2006 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 6, 2006 on a timely appeal filed February 17, 2006.

It should be noted here that the Claimant's benefits have been 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

\_\_\_\_\_, mother of Claimant

\_\_\_\_\_ Claimant's care giver, Panhandle Support Services

Kay Ikerd, RN, BoSS (participating telephonically)

\_\_\_\_\_ RN, WVMI (participating telephonically)

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 520, 570 and 580

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

**Department's Exhibits:**

D-1 Aged/Disabled Home and Community-Based Services Manual Sections 520, 570 and 580

D-2 Pre-Admission Screening (PAS) 2005 assessment completed on February 2, 2006

D-3 Notice of Decision dated February 14, 2006

**Claimant's Exhibits**

C-1 Letter from Dr. \_\_\_\_\_

**VII. FINDINGS OF FACT:**

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter ADW, was undergoing an annual reevaluation to verify continued medical eligibility.
- 2) \_\_\_\_\_ RN, West Virginia Medical Institute, completed a medical assessment (D-2) on February 2, 2006 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 24 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a LOC "C" (24 points)- eligible for four (4) hours per day or 124 hours per month of homemaker services. It should be noted that the Claimant previously qualified as a LOC "D"- eligible for five (5) hours per day or 155 hours per month of homemaker services.

- 3) The Claimant was sent notification on February 14, 2006 (D-3) advising him of the proposed reduction in hours.
- 4) Witnesses for the Claimant contended that additional points should be awarded in the following areas:

***Pain and contractures-*** Ms. \_\_\_\_\_ testified that her son has contractures of his hands and wears splints. She stated that her son's hands draw up and that she unfolds his legs when they spasm and contract at night. Ms. \_\_\_\_\_ stated that the spasms result in pain for which her son takes over-the-counter Tylenol. She testified that the Claimant had previously been prescribed pain medication, but medical providers had hoped that spasm medication and Tylenol would now alleviate his pain.

Ms. [REDACTED] testified that she assists the Claimant with leg and hand exercises, and that his fingers tighten up and she massages them to bend them back into position. She testified that the Claimant wears braces whenever he is not doing exercises. In addition, Ms. [REDACTED] testified that the Claimant constantly complains about finger pain and pain in his left foot.

Ms. [REDACTED] testified that the Claimant was awarded a point for spasms, but no contracture diagnosis was provided at the time of the PAS assessment. She testified that a contracture is a "stuck joint" that will no longer move and said the Claimant's joints are movable. In addition, she testified that the Claimant does not take prescription pain medication.

Ms. \_\_\_\_\_ provided a letter from Dr. [REDACTED] dated April 27, 2006 (C-1) which states, in part:

\_\_\_\_\_ has Friederich's Ataxia, which is a progressive terminal neurological condition. He has already lived and survived longer than the average patient with this condition.

His condition has deteriorated over the past year, with increasing spasticity of his extremities, worsening of his contractures, and associated increased pain in his extremities.

***Based on information presented during the hearing, one (1) additional point is awarded for contractures and one (1) additional point is awarded for pain as the Claimant's physician indicates that he has been diagnosed with contractures which result in pain. Testimony from the Claimant's mother and care giver corroborates this information.***

***Eating-*** Ms. \_\_\_\_\_ testified that her son can use a cup if someone puts it in his hand and clasps his hand around it. She stated that it takes effort for the Claimant to move the cup up to his mouth and that he is wobbly and has spills.

Ms. [REDACTED] testified that the Claimant picked up a cup while she was there by hooking it with his thumb and was able to take drinks, although he was not well coordinated.

***No additional point is awarded for total care with eating as the Claimant was rated on the PAS as requiring physical assistance with eating and this conclusion is accurate since he can participate in the activity to a limited extent.***

***Grooming-*** Ms. [REDACTED] testified that she puts a toothbrush in the Claimant's mouth, but it takes some time for the Claimant to place his fingers around the toothbrush. She stated that the Claimant mainly moves his head to brush his teeth. Ms. [REDACTED] testified that the Claimant needs assistance with all of his activities because he has no control of his extremities.

Ms. [REDACTED] testified that the Claimant is able to assist with his teeth brushing to a limited extent.

***No additional point is awarded for total care with grooming as the Claimant was correctly rated as requiring physical assistance with this activity at the time the PAS was completed.***

***Hearing-*** Ms. [REDACTED] testified that her son's neurologist has indicated that nerve problems in his ears are not correctable.

Ms. [REDACTED] testified that the Claimant can hear fairly well if people speak loudly. It was also noted that the Claimant can hear the television if the volume is adjusted.

***No additional point is awarded for impaired/non-correctable hearing as the Claimant's hearing is functional in the home with volume adjustments.***

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 570.1.c and 570.1.d (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- 1 point for each (can have total of 12 points)
- #24- 1 point
- #25- Level I- 0 points  
Level II- 1 point for each item A through I  
Level III- 2 points for each item A through M; I (walking) must be equal to or greater than Level III before points are given for J (wheeling)  
Level IV- 1 point for A, 1 point for E, 1 point for F, 2 points for G through M
- #26 1 point for continuous oxygen
- #27 1 point for "No" answer- medication administration
- #33- 1 point for Alzheimer's or other dementia
- #34- 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 2005.
- 2) The Claimant received 24 points on a PAS completed by Ms. [REDACTED] in February 2006 in conjunction with an annual reevaluation.
- 3) As a result of testimony presented during the hearing, two (2) additional points are awarded to the Claimant.
- 4) This brings the Claimant's total number of points to 26, which is indicative of a Level of Care "D" and renders the Claimant eligible for five (5) hours per day or 155 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 10th Day of July, 2006.**

---

**Pamela L. Hinzman  
State Hearing Officer**