



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
227 Third St.  
Elkins, WV 26241

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

January 9, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 28, 2005. 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 WVMI. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual 520 & 570.1)

Information submitted at your hearing revealed 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 remain at 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 proposed action 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  
Select In-Home Services  
BoSS

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

\_\_\_\_\_,

**Claimant,**

**v.**

**Action Number: 05-BOR-6207**

**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 January 9, 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 December 28, 2005 on a timely appeal filed July 13, 2005. The hearing was originally scheduled for October 4, 2005 but was rescheduled at the request of the Claimant. The hearing was then scheduled for December 2, 2005 but was rescheduled due to inclement weather.

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

\_\_\_\_\_, daughter of Claimant and Homemaker, Select In-Home Services

\_\_\_\_\_, RN, Select In-Home Services

\_\_\_\_\_, owner, Select In-Home Services

\_\_\_\_\_, RN, WVMI

Kay Ikerd, RN, BoSS (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) 2000 assessment completed on June 20, 2005

D-3 Notice of Decision dated July 5, 2005

#### **Claimant's Exhibits**

C-1 Medical information from \_\_\_\_\_,  
and 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 June 20, 2005 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

LOC "B" (16 points)- eligible for three (3) hours per day or 93 hours per month of homemaker services.

- 3) The Claimant was sent notification on July 5, 2005 (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 area:

*Vision-* Witnesses contended that the Claimant's vision should be assessed as impaired/not correctable. Medical evidence (C-1) was provided to verify that the Claimant has been legally blind for 10 to 12 years and has inoperable cataracts. Ms. [REDACTED] testified that the Claimant is only able to ambulate in his home because household items are in certain positions. She contended that the Claimant is not functional in his home and also cannot draw and inject his own insulin. She testified that the Claimant falls and stumbles inside his residence and bruises his legs. Since he is diabetic, it is more difficult for his injuries to heal. He is also alone in the household for about 2½ hours during the day so he stays in bed or participates in quiet activities during this time.

Ms. [REDACTED] stated that, on the date of the assessment, the Claimant indicated that his impaired vision does not affect his functional abilities in the home and that his vision problems did not appear to hinder his abilities on that date.

Ms. Ikerd testified that she does not dispute the Claimant's medical problems but that there is a difference between blindness and legal blindness. She stated that the Claimant has made adjustments in his lifestyle to suit his needs in the home and that his vision does not impair his functional abilities.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 570.1 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- 1 point for B, C or D
- #26- 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
- #27- 1 point for continuous oxygen
- #28- 1 point for Level B or C
- #34- 1 point for Alzheimer's or other dementia
- #35- 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. Based on testimony provided during the hearing, the Claimant's vision is a Level 3, impaired, not correctable, and two (2) additional points are awarded. The Claimant provided documentation that he has been legally blind for the past 10 to 12 years and has inoperable advanced cataracts. Testimony also revealed that the Claimant stumbles and bumps into furniture, etc., in the home, causing bruising to his legs. His ability to function in his residence is, therefore, directly affected by his impaired vision.

2. The two (2) additional points bring the Claimant's total number of points to 18, which is indicative of a Level of Care "C." The Claimant is eligible to receive four (4) hours per day of homemaker services or 124 hours per month.

## **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 9th Day of January, 2006.**

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**Pamela L. Hinzman  
State Hearing Officer**