



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 23, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 7, 2007. 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 (ADW) 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 WVMI. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual 503.2)

Information submitted at your hearing reveals that your condition at the time of your Pre Admission Screening qualifies for the degree of care and services offered under the Level C of Care under the ADW program.

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 from Level C to Level B.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
[REDACTED] CWWAS

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

_____, Claimant,

v.

Action Number: 07-BOR-1485

**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 August 7, 2007 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 August 7, 2007 on a timely appeal filed May 25, 2007.

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's Witnesses:

____ Claimant's daughter
____, Claimant's daughter
____, Claimant's friend

██████████ Case Manager, Central WV Aging Services (CWVAS)

Department's Witnesses:

Cathie Zuspan, Bureau of Senior Services, BoSS, by speakerphone

██████████ RN, WVMI, by speakerphone

Observing: ██████████ CWVAS

Presiding at the hearing was Sharon K. Yoho, 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, 503.2.2 and Attachment 14

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 April 18, 2007

D-3 Eligibility Determination dated April 18, 2007

D-4 Notice of reduction in benefits dated April 26, 2007

VII. FINDINGS OF FACT:

- 1) The claimant's Aged/Disabled Waiver case, hereinafter ADW, was undergoing an annual reevaluation to verify continued medical eligibility in April 2007. This claimant is a 93-year-old woman who is blind.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on April 18, 2007 in the Claimant's home. Present during the assessment was the

claimant's case manager, two homemaker RNs, homemaker, a friend and three of her daughters. The evaluating nurse determined that the claimant continued to meet the medical eligibility criteria. The WVMI nurse assigned 17 points in her evaluation of the level of care the claimant requires. This falls in the Level B of care.

3) Three points were assigned for Medical Conditions and Symptoms. One point was assessed for vacating in the event of an emergency. Eleven points were assessed in the area of functional abilities in the home. One point was assessed for medication administration and one for Dementia.

4) Witnesses for the Claimant raised issues in the following areas:

Bathing, which is under Functional abilities in the home: Testimony at the hearing indicates that the Claimant can assist in her bathing but does need some help. One point was given for needing some hands on assistance with bathing.

Orientation, The Claimant's daughters agree that she is intermittently disoriented as the evaluating nurse noted. They however, believe that their mother is getting worse. One point was given for intermittent disorientation.

Walking, The Claimant is able to walk on her own but often needs someone to place her hand on the wall or counter so she can use it to follow along while she walks. Others follow closely behind her to supervise her ambulation. She needs hands on assistance to go up and down the steps to get to and from her bath. The evaluating nurse assigned one point for needing only supervision or assistive device.

Communication, The Claimant's communication is not always appropriate but she is able to verbalize her wants and needs. The evaluating nurse gave no points.

Arthritis, The Claimant complains of joint pain, but no arthritis diagnosis has been assigned by an appropriate medical professional.

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) (must be based on medical evidence presented by appropriate medical professionals)

#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

6) Aged Disabled Waiver Manual Chapter 500, Attachment 14:

	Level 1	Level 2	Level 3
b. Bathing	Self/Prompting	Physical Assistance	Total Care
g. Orientation	Oriented	Intermittent Disoriented	Totally Disoriented
i. Walking	Independent	Supervised/Assistive device	One Person assist
m. Communication	Not Impaired	Impaired/Understandable	Understandable w aids

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 received 17 points on a PAS completed by WVMi in April 2007 in conjunction with an annual reevaluation. For the previous level of care, “C” the claimant would require one additional point.
- 3) Evidence and testimony presented during the hearing, did not support that the evaluating nurse should have awarded additional points in the areas of bathing, orientation, communication or for arthritis. She is able to help with bathing, is only intermittently disoriented, can communicate her wants and needs and does not have a diagnosis of arthritis.
- 4) Testimony and evidence did support that claimant does need hands on assistance for ambulating. Others must place her hand on an assistive device such as a wall or counter in order for her to ambulate in the direction she needs to go. The claimant also needs hands on assistance to ambulate up and down steps for her baths.
- 5) The evaluating nurse should have assessed one additional point for walking for a total number of eighteen (18) points, which is indicative of a Level of Care “C” and renders the Claimant eligible for (124) hours per month of homemaker services.

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 23rd Day of August 2007.

**Sharon K. Yoho
State Hearing Officer**