

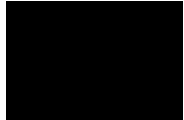


State of West Virginia  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

Joe Manchin III  
Governor

Office of Inspector General  
Board of Review  
PO Box 29  
Grafton WV 26354  
September 13, 2007

Martha Yeager Walker  
Secretary



Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 24, 2007. 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 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 § 503.2.1)

The information submitted at the hearing revealed that as a result of your most recent medical evaluation (PAS), the agency determined your point total as 24 or a C Level of Care (124 hours maximum per month). Evidence offered during the hearing established 5 additional points, resulting in a total of 29 points.

It is the decision of the State Hearing Examiner to **reverse** the determination of the Agency as set forth in the April 27, 2007 notification. Evidence reveals that the claimant continues to qualify for a **D** Level of Care.

Sincerely,

Ron Anglin  
State Hearing Examiner  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Kay Ikerd, RN, Bureau of Senior Services (BoSS)  
[REDACTED], CM, [REDACTED]

# WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

[REDACTED]  
Claimant,

Action Number 07-BOR -1527

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 Examiner resulting from a fair hearing concluded on September 13, 2007 for [REDACTED]. 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 24, 2007 on a timely appeal received by the Bureau of Senior Services June 6, 2007 and this examiner July 5, 2007.

### 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] claimant

[REDACTED] father to the claimant

[REDACTED], CM, [REDACTED]

[REDACTED], RN, [REDACTED]

[REDACTED] homemaker

Kay Ikerd RN, BoSS (by phone)

[REDACTED], 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 § 503.2.1 (10-1-06)

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

- A-1 A/D Waiver Manual § 503.2- 503.2.2
- A-2 WVMi Independent Review (PAS) completed 4/26/07
- A-3 Notification, 4/27/07
- A-4 Medical Necessity Evaluation Form, 3/6/07, Dr Savage.
  
- C-1 Medical Necessity Evaluation Form, 8/16/07, Dr Savage

#### **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 (A-2) completed by WVMi on April 26, 2007, WVMi determined the claimant's Level of Care to be C or 124 hours monthly- a reduction from level D (155 hours). The agency provided notification to the claimant of the reduction in hours April 27, 2007 (A-3). The claimant requested a hearing in a request dated June 25, 2007. This request was received by this examiner July 5, 2007 and a hearing was scheduled for and convened August 24, 2007. Services under the Medicaid Title XIX Waiver (HCB) Program have continued at the previous level.

2) Exhibits as noted in Section VI above were presented.

3) Testimony was heard from the individuals listed in Section III above. All persons giving testimony were placed under oath.

4) Based on the medical evaluation of April 26, 2007 and testimony of the WVMi nurse, the Agency acknowledged a total of 24 points in determining a C "Level of Care".

5) The agency awarded 2 points in Section 23 of the evaluation: Mental Disorders (Dx Provided) and Other (GERD).

6) A-4 consists of the Medical Necessity Evaluation Form completed by Dr Savage on 3/6/07. The diagnosis noted on this document is "Profound Mental Retardation" No other diagnoses, conditions or symptoms are noted.

7) C-1 consists of a Medical Necessity Evaluation Form completed by Dr. [REDACTED] on 8/16/07. Other pertinent medical conditions listed and checked in the affirmative here are: Dyspnea, Arthritis, Aphasia, Pain and Contractures.

8) Aged/Disabled Home and Community-Based Waiver Manual 503.2.1(10-1-06):  
There are four levels of care for homemaker services. Points will be determined as follows, 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 - Decubitus - 1 Point

#25 - 1 point for b, c, or d.

#26 - Functional levels

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 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

#35 - Prognosis- 1 point if terminal

Total number of points allowable is 44.

LEVELS OF CARE SERVICE LIMITS (503.2.2)

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 requires a specific number and degree of functional deficits for the assignment of points to arrive at the Level of Care. The claimant was awarded a total of 24 points by the agency based on the evaluation of April 26, 2007 which resulted in assignment of a C "Level of Care".

2) Directives provide that in Section 23 of the medical evaluation, points (one for each condition) are awarded for each item under "Medical Conditions/Symptoms". In addition to the 2 points awarded by the agency for Mental Disorder and Other (GERD), evidence reveals the claimant also suffers Dyspnea, Arthritis, Aphasia, Pain and Contractures creating 5 additional points.

3) Policy requires a minimum total of 26 points to qualify for a care level of D. The agency acknowledged a total of 24 points and evidence offered during the hearing provided 5 additional points. A total of 29 points results in a D level of care (a maximum of 155 hours per month).

#### **IX. DECISION:**

The Agency's determination as set forth in the April 27, 2007 notification is **reversed**. The claimant continues to qualify for a **D** Level of Care.

The agency objected to the admittance of the exhibit herein marked C-1 which consisted of a more thorough explanation of the claimant's diagnoses and other pertinent conditions and symptoms. The basis for this objection being the timeliness of its entry into the record- because it had not been submitted previously than whatever it contained should not be considered.

This objection is overruled

The purpose of any medical evaluation and indeed of an administrative hearing should be to compile as complete and accurate record of the relevant circumstances as possible, so that a valid, justifiable decision may be reached. Exclusion of the aforementioned document, which is found to be historical in nature and not limited to any specific day or time period (e.g. the day of the evaluation) would be inappropriate.

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

See Attachment.

#### **XI. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

**Entered this 13<sup>th</sup> Day of September 2007**

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

**CLAIMANT'S RECOURSE TO ADMINISTRATIVE HEARING DECISION**  
**For**  
**Public Assistance Hearings,**  
**Administrative Disqualification Hearings, and**  
**Child Support Enforcement Hearings**

**A. CIRCUIT COURT**

Upon a decision of a State Hearing Officer, the claimant will be advised he may bring a petition in the Circuit Court of Kanawha County within four months (4) from the date of the hearing decision.

The Court may grant an appeal and may determine anew all questions submitted to it on appeal from the decision or determination of the State Hearing Officer. In such appeals a certified copy of the hearing determination or decision is admissible or may constitute prima facie evidence of the hearing determination or decision. Furthermore, the decision of the circuit Court may be appealed by the client or petitioner to the Supreme Court of Appeals of the State of West Virginia.

**B. THE UNITED STATE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the United States Department of Health and Human Services, Washington, D.C. 20201.

**C. THE UNITED STATE DEPARTMENT OF AGRICULTURE**

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the Department of Agriculture, Washington, D.C. 20250.



**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
HEARING DECISION TRANSMITTAL FORM**

DATE: March 6, 2008

TO: Kay Ikerd, RN  
Bureau for Senior Services

FROM: Ron Anglin, State Hearing Examiner

RE: NAME: Norma Tenney  
COUNTY: Barbour  
CATEGORY: Medicaid, Aged Disabled Waiver- Level of Care

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**ATTACHED IS THE DECISION AND SUMMARY ON THE ABOVE-NAMED CASE:**

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In favor of the claimant **(REVERSED)**  
**After completion, return this form to Erika Young, Chairman, Bd. Of Review**

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**PLEASE COMPLETE THE BOTTOM OF THIS FORM AND RETURN  
ONE COPY TO THE STATE HEARING OFFICER**

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- ☐ Date Hearing decision implemented\_\_\_\_\_
- ☐ Effective Date\_\_\_\_\_
- ☐ Amount of Retroactive Payment\_\_\_\_\_
- ☐ Case Continued No Action Necessary\_\_\_\_\_
- ☐ No Action Necessary \_\_\_\_\_
- ☐ Action Not Taken (Give Reason) \_\_\_\_\_

Date\_\_\_\_\_ Signature\_\_\_\_\_

(Agency Employee)