



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Ave.
Lewisburg, WV 24901**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

October 26, 2007



Dear Ms. [REDACTED]:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 10, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to decrease homemaker hours under the Aged Disabled Waiver, ADW, 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 ADW Program is based on current policy and regulations. Some of these regulations state as follows: The Aged/Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who meet all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. (Aged/Disabled (HCB) Services Manual 570- 570.1b (11/1/03).

The information which was submitted at your hearing revealed that after review of the current PAS-2000, you meet the criteria for level of care C which equates to 124 service hours per month.

It is the decision of the State Hearing Officer to reverse the proposed action of the Department to decrease homemaker hours to a level B under the ADW Program.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

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

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

██████████
Claimant,

Action Number: 07-BOR-1665

v.

**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 October 10, 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 October 10, 2007 on a timely appeal, filed June 21, 2007. It should be noted that this hearing was originally scheduled for August 23, 2007. The hearing was rescheduled at the request of the Claimant for October 10, 2007.

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:

[REDACTED] Claimant
[REDACTED] Claimant's Daughter
[REDACTED], Case Manager, [REDACTED]
[REDACTED], CNA, [REDACTED]
Kay Ikerd, RN, BoSS (By Telephone)
[REDACTED], RN, WVMi (By Telephone)

Presiding at the hearing was Margaret M. Mann, 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 Department was correct in their decision to reduce homemaker hours under the Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service Manual §503, §503.1.1, §503.2.1 and §503.2.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community based Services Manual §503.2., §503.2.1 and §503.2.2
- D-2 Pre-Admission Screening, PAS-2000, completed May 22, 2007
- D-3 Notice of Decision dated June 8, 2007

VII. FINDINGS OF FACT:

- 1) The Claimant's birth date is listed as 04/13/1927. She is an active participant in the ADW Program and her eligibility was undergoing a re-evaluation on May 22, 2007. Her level of care had been previously assessed as a level 'D'.
- 2) A WV Medical Institute nurse, LG, completed a Pre-Admission Screening (PAS-2000) on May 22, 2007 in the Claimant's home with the Claimant, the Claimant's caregiver A, and her case manager present. This PAS evaluation determined that the Claimant remained eligible for the Aged/Disabled Waiver program; however, it was determined

that the level of care that she required had decreased from level D to a level B with seventeen (17) points awarded. (Exhibits D-2 & D-3)

- 3) The Claimant's diagnoses listed on the referral form were COPD, Macular Degeneration, S/P Retinal Detachment, CAD, Sys Heart Failure, Irregular Heart Rate, Hypothyroidism, Hyperlipidemia, GERD, Arthritis, Dysphagia, Pain, Depression, Incontinence. Claimant reported she was on oxygen 24 hrs a day at 2 ½ to 3 litres. She reported last hospitalization was March or April for breathing difficulty. (Exhibit D-2)
- 4) The May 22, 2007 PAS (Exhibit D-2) assigned this Claimant with seventeen (17) points in determining the level of care required. The evaluating nurse assigned six (6) points in the areas of Medical Conditions/Symptoms (c – dyspnea, d – significant arthritis, f – dysphagia, h – pain, k – mental disorder, and l (other) – Systolic Heart Failure; and eight (8) points in the area of functional levels. The Claimant was assessed as being physically unable to vacate in the event of an emergency (1 point). The Claimant was assigned one (1) point under #27 Professional and Technical Care needs for continuous oxygen. One (1) point was awarded under #28 as the Claimant administers her medication with prompting/supervision. The point total was seventeen (17) which was Level of Care B. This equates to 93 homemaker hours per month.
- 5) The issues contested in the hearing were in the following areas: Bladder incontinence, vision, transferring and wheeling. The Claimant was assessed as follows on the PAS-2000. Bladder – 1 Continent; Vision – 2 Impaired/Correctable; Transferring – 2 Supervised/Assistive Device; and Walking – 3 One Person Assistance. (Exhibit D-2)
- 6) The PAS reads as follows: Continence: Bowel/Bladder: She denies any bladder incontinence or accidents. She denies any pads or depends. She reports with her bowels she does lose control sometimes approx. 2 x month. Transferring: Member holds to her cane, bed, or other items to transfer with in the home. Wheeling: Member uses power chair in the home. She reports she uses it independently in the home. Vision: She wears eyeglasses and reports she sees better with them on. She was able to sign her name on the consent form and could see how many fingers the nurse was holding up. Walking: Member reports she does walk a little in the home if someone is there to assist her. She got up and [REDACTED] assisted her approx. 4 ft. and back to the bed. She was extremely shaky and unsteady and short of breath. [REDACTED] does report she does transfer on her own to the bedside commode and to the power chair when no one is in the home in the evenings.
- 7) Testimony from the Claimant's daughter revealed that her mother has become worse with transferring and wheeling. Her mother has been incontinent for some time. When she discussed incontinence with her mother, she did not understand what that meant. She would estimate that at the time of the assessment she had bladder incontinence pretty much on a daily basis.
- 8) Testimony from the case manager revealed that the Claimant has been wet on a daily basis for some time. It is noted on the PAS under vision – impaired/correctable. One of the major diagnoses the Claimant has is macular degeneration. She has had several surgeries and it has not improved her vision. The Claimant has her television at the foot of her bed but she cannot see it. She turns it up loud in order to hear the television. The

Claimant does get stuck in the door way with her wheelchair. 911 has been called several times because the Claimant has fallen and could not transfer back to her wheelchair. This has happened several times before May 2007 and after May 2007. The Claimant could not remember specific dates other than an incident in June 2007.

- 9) Testimony from the BoSS RN revealed that under vision the nurse is assessing the Claimant's functional vision, not the medical level of the vision. What they are assessing is does the client see enough to function daily in her home.
- 10) Aged/Disabled Home and Community-Based Services Manual Section 503 – Member Eligibility and Enrollment Process:

Applicants for the ADW Program must meet the following criteria to be eligible for the Program:

- C. Be approved as medically eligible for NF Level of Care.
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- 11) Aged/Disabled Home and Community-Based Services Manual Section 503.1.1 –

Purpose: The purpose of the medical eligibility review is to ensure the following:
 - A. New applicants and existing clients are medically eligible based on current and accurate evaluations.
 - B. Each applicant/client determined to be medically eligible for A/DW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term services needs.
 - C. The medical eligibility determination process is fair, equitable and consistently applied throughout the state.
 - 12) Aged/Disabled Home and Community-Based Services Manual Section 503.2 – Medical Criteria

An individual must have five deficits on the PAS to qualify medically for the A/DW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

- A. Decubitus - Stage 3 or 4 (Item 24 on PAS 2000)
- B. Unable to vacate a building- In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. A) independently and b) With Supervision are not considered deficits. (Item#25 on PAS-2000)

C. Functional abilities of individual in the home. (Item 25 on the PAS 2000).

- Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)
- Bathing ----- Level 2 or higher (physical assistance or more)
- Grooming--- Level 2 or higher (physical assistance or more)
- Dressing ---- Level 2 or higher (physical assistance or more)
- Continence-- Level 3 or higher (Must be incontinent of (e) bowel and/or (f) bladder)
- Orientation-- Level 3 or higher (totally disoriented, comatose)
- Transfer----- Level 3 or higher (one person or two person assistance in the home)
- Walking----- Level 3 or higher (one person assistance in the home)
- Wheeling----- Level 3 or higher (must be Level 3 or 4 on walking in the home to use Level 3 or 4 for wheeling in the home. Do not count outside the home)

D. Individual has skilled needs in one or more of these areas B (g)suctioning, (h)tracheostomy, (i)ventilator, (k)parenteral fluids, (l)sterile dressings, or (m) irrigations. (Item 27 on the PAS 2000)

E. The individual is not capable of administering his/her own medications. (#28 on the PAS-2000)

13) Aged/Disabled Home and Community Based Service Manual # 503.2.1 & 503.2.2.:

There are four levels of care for clients of ADW Homemaker services. Points will be determined as follows, based on the following sections of the PAS 2005:

- #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 1 point Decubitus
- #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 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 for Alzheimer's or other dementia
- #35 Prognosis – 1 point if Terminal

Levels of Care Service Limits:

Level A	5-9 points	62 Hours per Month
Level B	10-17 points	93 Hours per Month
Level C	18-25 points	124 Hours per Month

Level D 26-44 points 155 Hours per Month

VIII. CONCLUSIONS OF LAW:

- 1) The Aged Disabled Waiver policy provides that an individual must be assigned 26 to 44 points to qualify as requiring a level D in care, which is 155 hours per month in homemaker services. 18 to 25 points indicates a level C which is for 124 hours per month in homemaker services. 10 to 17 points indicates a level B which is for 93 hours per month in homemaker services. The evaluating nurse assigned 17 points, which falls within the Level B of care.
- 2) The areas contested in this hearing were bladder incontinence, vision, transferring and wheeling.
- 3) An additional point will be awarded for bladder incontinence. Although the Claimant denied bladder incontinence during the assessment, one of the diagnoses listed was incontinence. Witnesses for the Claimant confirmed that at the time of the assessment, the Claimant was wet on a regular basis. The Claimant will be assessed as level 2 for bladder incontinence.
- 4) No additional points are awarded for vision, transferring and wheeling. Testimony revealed that the Claimant was able to see well enough to sign forms. There was no clear testimony or evidence provided at the hearing to change the determination made by the WVMi nurse on the day of the assessment in the areas of wheeling and transferring.
- 5) There is a total of eighteen (18) points assigned to the Claimant. Eighteen (18) points is level of care C which equates to 124 service hours per month.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, it is the finding of the State Hearing Officer that the Department has incorrectly determined the Claimant's level of care according to the information found on the PAS-2000 form dated May 22, 2007. The Department is reversed in the decision to reduce the number of service hours to 93 under the Aged/Disabled Home and Community-Based Services Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 26th Day of October, 2007.

**Margaret M. Mann
State Hearing Officer**