



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

October 29, 2007



Dear Ms. 

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 26, 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 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 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


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

██████,

Claimant,

v.

Action Number: 07-BOR-2051

**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 29, 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 26, 2007 on a timely appeal filed August 31, 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:

[REDACTED] Claimant (participated telephonically)
[REDACTED], RN, [REDACTED]
[REDACTED], Case Manager, [REDACTED] (participated telephonically)
Kay Ikerd, RN, Bureau of Senior Services (participated telephonically)
[REDACTED], RN, West Virginia Medical Institute (participated 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 503.2, 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 Sections 503.2, 503.2.1, 503.2.2
- D-2 Pre-Admission Screening (PAS) assessment completed on August 2, 2007
- D-3 Notice of Decision dated August 7, 2007
- D-4 Medical information from Dr. [REDACTED]

Claimant's Exhibits:

- C-1 Updated version of PAS dated August 2, 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.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on August 2, 2007 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 25 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care "C"- 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 Level of Care "D"- eligible for five (5) hours per day or 155 hours per month of homemaker services.

- 3) The Claimant was sent notification on August 7, 2007 (D-3) advising her of the proposed reduction in hours.
- 4) Witnesses for the Claimant contended that one (1) additional point should be awarded for bowel incontinence. The Claimant had originally been rated at Level I- continent (zero points)- based on information provided during the PAS assessment. The WVMi nurse had updated the PAS, elevating the Claimant to a Level II- occasionally incontinent (one point)- based on additional information received from Dr. [REDACTED] (D-4).

The Claimant's witnesses testified that the Claimant should be rated as Level III- totally incontinent- as she has daily bowel accidents. The Claimant takes a laxative daily as she is frequently constipated. Witnesses testified that the laxative causes the Claimant to have diarrhea and she cannot make it to the toilet before soiling herself.

The WVMi Nurse testified that the Claimant reported bladder incontinence, but stated she has constipation and denied bowel incontinence during the assessment. She testified that she only rated the Claimant at Level I- occasional incontinence- because the physician failed to specify the frequency of the incontinence and because the Claimant did not report the problem. The Claimant's witnesses responded that the Claimant is a private person and did not want to admit that she has bowel incontinence. The [REDACTED] Nurse, who was present during the assessment, testified that she did not correct the Claimant at that time because she did not want to embarrass her, however, she attempted to provide "hints" to the WVMi Nurse that the Claimant's statement was inaccurate. The Senior Center Nurse also testified that she was not in complete agreement with the PAS as she needed to obtain additional diagnoses. The BoSS Nurse testified that the Claimant should not be considered incontinent if her diarrhea is the result of a laxative.

- 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

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 was awarded 25 points as the result of a PAS completed by WVMi in August 2007 in conjunction with her annual medical reevaluation.
- 3) Testimony indicates that the Claimant- on a daily basis- alleviates her constipation with the use of a laxative. While the Department contends that laxative-induced diarrhea does not meet the definition of incontinence, testimony reveals that the Claimant cannot restrain these evacuative functions. Regardless of the source of the bowel movement, the Claimant is unable to control discharge of her waste matter. Therefore, the Claimant's rating is elevated to a Level III- total bowel incontinence- based on the physician's diagnosis and testimony indicating that she has accidents more than three times per week.
- 4) The addition of one (1) point 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 29th Day of October, 2007.

**Pamela L. Hinzman
State Hearing Officer**