



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
PO Box 6165  
Wheeling, WV 26003

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

December 19, 2007

██████ for ██████

██████

Dear Ms. ██████

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 18, 2007. Your hearing request was based on the Department of Health and Human Resources' decision on 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 503.2, 503.2.1 and 503.2.2)

Information submitted at your hearing revealed that the evaluating nurse assigned you 25 points for your documented medical conditions. In addition, at your hearing it was determined that an additional two (2) points should have been awarded for incontinence of the bowel. Based on 27 points 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 decision of the Department to award you a Level C Level of Care and award you a Level D Level of Care.

Sincerely,

Melissa Hastings  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
WVMI  
BOSS  
██████

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

█  
**Claimant,**

v.

**Action Number: 07-BOR-2332**

**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 December 18, 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 December 19, 2007 on a timely appeal filed October 23, 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:**

Claimant's Witnesses

- Claimant
- Claimant's Mother
- Claimant's Sister
- [REDACTED], Homemaker RN – [REDACTED]

Department's Witnesses

- Kaye Ikerd, RN - Bureau of Senior Services by telephone
- [REDACTED], RN – WVMI by telephone

Presiding at the hearing was Melissa Hastings, 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 decision to assign Claimant to a "C" Level of Care for the Aged/Disabled Waiver Program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community Based Services Manual Section 500, 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 and 503.2.2
- D-2 Pre-Admission Screening (PAS) assessment completed on June 25, 2007
- D-3 Notice of Decision dated June 28, 2007

**Claimant's Exhibits**

None

**VII. FINDINGS OF FACT:**

- 1) Claimant is a 20 year old female with a diagnosis of muscular dystrophy. Her Aged/Disabled Waiver program eligibility was being evaluated on June 25, 2007.

- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (**D-2**) on June 25, 2007 with claimant and her mother participating. The evaluating nurse determined that the claimant to met the medical eligibility criteria for the AD/W program.
- 3) The Claimant was assigned 25 points by the evaluating nurse for documented medical conditions that require nursing services. A level of care (LOC) "C" (18-25 points) was assigned to claimant making her eligible for four (4) hours per day or 124 hours per month of homemaker services.
- 4) The Claimant was sent notification on June 28, 2007 (**D-3**) advising her of the approval of her application with an assigned level of care of 124 hours per month.
- 5) Testimony and evidence received during the hearing reveal that the evaluating nurse from West Virginia Medical Institute, Inc. properly evaluated and awarded 25 points to the Claimant based on regulations for the Aged/Disabled Waiver program.
- 6) Testimony received from the Claimant's mother indicates that Claimant does have incontinence of the bowel. Claimant does know when she needs to have a bowel movement but is unable to hold it long enough for family to put her on a bedpan. Claimant uses diapers and chux on her bed. Evaluating nurse's testimony indicates that if she were provided this information at the interview on June 25, 2007 she would have awarded the Claimant an additional two (2) points.
- 7) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2, 503.2.1 and 503.2.2 (D-1): 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)
- #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 III 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
- #35- Prognosis - 1 point if terminal

The total number of points possible 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.
- 2) The Claimant received 25 points based on a properly completed PAS done by a WVMI nurse in June 2007. Evidence presented at this hearing indicates that Claimant does have bowel incontinence and should have been awarded an additional two (2) points by the evaluating nurse.
- 3) Policy dictates that an evaluation resulting in an award of 27 points on a properly completed PAS will result in an individual being assigned a level of care of 155 hours per month.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the Agency's decision to award the Claimant 124 homemaker service hours under the Aged/Disabled, Title XIX (HCB) Waiver Program. An award of 27 points has been determined through this hearing. As a result, Claimant is entitled to receive a Level D level of care entitling her to 155 hours per month of service.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 19th Day of December, 2007.**

---

**Melissa Hastings  
State Hearing Officer**