



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  
February 16, 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 January 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 22 or a C Level of Care (124 hours maximum per month). Evidence offered during the hearing established 4 additional points, resulting in a total of 26 points.

It is the decision of the State Hearing Examiner to **reverse** the determination of the Agency as set forth in the October 13, 2006 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  
Libby Boggess, RN, Bureau of Senior Services (BoSS)  
[REDACTED], West Virginia Medical Institute (WVMI)

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

█  
Claimant,

Action Number 06-BOR- 3240

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 February 14, 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 January 24, 2007 on a timely appeal received by the Bureau of Senior Services October 23, 2006.

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:

█ claimant

█ spouse to the claimant

█, CM, █

█, RN, █

█, claimant's homemaker

Kay Ikerd RN, BoSS (by phone)

█, 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:**

- E-1 A/D Waiver Manual § 503.2- 503.2.2
- E-2 WVMi Independent Review (PAS) completed 10/06/06
- E-3 Notification, 10/13/06
- E-4 Page 6 of 10/26/05 PAS-2000 evaluation
- E-5 Level of Care Change Request and approval letter, 3/16/06
- E-6 Medical Necessity Evaluation Request, 8/23/06
- C-1 Statement Dr [REDACTED] - no date
- C-2 Dr. Notes, [REDACTED] 10/26/06

**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 (E-2) completed by WVMi on October 6, 2006, 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 October 13, 2006 (E-3). The claimant requested a hearing in a request dated October 20, 2006. This request was received by this examiner December 18, 2006 and a hearing was scheduled for and convened January 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 October 6, 2006 and testimony of the WVMi nurse, the Agency acknowledged a total of 22 points in determining a C "Level of Care".

5) The agency awarded 5 points in Section 23 of the evaluation: Dyspnea, significant Arthritis, Pain, Mental disorder and Other (neuropathy). In Section 24- 1 point was awarded for Decubitis.

6) In Section 25 - 1 point was awarded based on physical inability to vacate.

7) In Section 26 of the evaluation a total of 13 points were awarded. Eating, Bathing, Dressing and Grooming were all –physical assistance 1 points each- total 4 points. 2 points were awarded for bladder continence and 1 for bowel continence – total 3 points. Transferring, Walking and Wheeling were all level 3 – 2 point each total 6. Total for this Section 13 points

8) On the evaluation 1 point each was awarded for medication administration and Alzheimer's, multi-farct dementia or a related condition. (total - 2)

9) Credible, sworn testimony on behalf of the claimant reveals that she is, at a minimum, intermittently disoriented. She doesn't always recognize the caretakers. She had surgery on her foot and the condition of her foot was characterized by the CM/RN as contractures. The claimant participation in dressing and grooming was characterized as minimal. She can only lift arms to aid in dressing on a "good day". In grooming her participation consists of attempting to brush her teeth on a "good day". Her hair, hand/foot and oral care are addressed by the HM, spouse or podiatrist. Her bed must be changed 7 – 10 times per week according to her husband and the HM indicated the client is bowel incontinent (in the morning) 3 out of 5 days during her time in the home.

10) Exhibit C-2 an evaluation by Dr. [REDACTED] from October 26, 2006 indicates a worsening of Dysphagia.

11) 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 22 points by the agency based on the evaluation of October 6, 2006, 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, evidence reveals the claimant also suffers Dysphagia and Contractures creating 2 additional points.

3) Policy provides that points are awarded in Section 25 of the medical evaluation for Grooming and Orientation as follows: 1 point for level 2 (occasional) and 2 points for level 3 (total). While the agency acknowledged level 2 in Dressing and level 1 in Orientation (Oriented- no points), evidence reveals that the claimant is essentially total care in Grooming (level 3 or 3 points) and in Orientation is at least occasionally or intermittently disoriented ( level 2 or 1 point). These factors create 2 additional points in the level of care determination.

4) Policy requires a minimum total of 26 points to qualify for a care level of C. The agency acknowledged a total of 22 points and evidence offered during the hearing provided 4 additional points. A total of 26 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 October 13, 2006 notification is **reversed**. The claimant continues to qualify for a **D** Level of Care.

## X. RIGHT OF APPEAL

See Attachment.

## XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

Entered this 16<sup>th</sup> Day of February 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: December 4, 2007

TO: Libby Boggess, RN  
Bureau for Senior Services

FROM: Ron Anglin, State Hearing Examiner

RE: NAME: [REDACTED]  
COUNTY: [REDACTED]  
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)**

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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)