

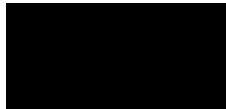


State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 970  
Danville, WV 25053

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

June 8, 2007



Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 20, 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 (ADW) 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 your condition at the time of your Pre Admission Screening qualifies for the degree of care and services offered under the Level C of Care under the ADW program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to decrease your Level of Care under the Aged/Disabled Waiver Program from Level D to Level C.

Sincerely,

Cheryl McKinney  
State Hearing Officer  
Member, State Board of Review

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

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

**Claimant,**

**v.**

**Action Number: 06-BOR-3282**

**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 March 20, 2007 for [REDACTED] 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 March 20, 2007 on a timely appeal filed November 17, 2006. The hearing was previously scheduled for February 13, 2007 but was continued at the Claimant's request.

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:**

Claimant's Witnesses:

[REDACTED] Claimant  
[REDACTED] Claimant's grandson  
[REDACTED], Case Manager, [REDACTED]  
[REDACTED], Homemaker, [REDACTED]  
[REDACTED] Claimant's nephew and his wife

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services, BoSS, by speakerphone  
[REDACTED], RN, WVMI, by speakerphone

Presiding at the hearing was Cheryl McKinney, 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 October 4, 2006
- D-3 Eligibility Determination dated October 4, 2006
- D-3 Notice of reduction in benefits dated October 27, 2006

#### **Claimant's Exhibits:**

None

### **VII. FINDINGS OF FACT:**

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter ADW, was undergoing an annual reevaluation to verify continued medical eligibility in October 2006.

- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on October 4, 2006 and determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse assigned 24 points in her evaluation of the level of care the claimant requires.
- 3) Eight (8) points were assessed for Medical Conditions and Symptoms. One (1) point was assessed for vacating in the event of an emergency. Thirteen (13) points were assessed in the area of functional abilities in the home. One (1) point was assessed for Professional and Technical Care needs. One (1) point was assessed for medication administration. A total of twenty four (24) points were assessed during the screening.
- 4) Witnesses for the Claimant raised issues in the following areas:

***Bathing***, which is under Functional Levels: The claimant's grandson testified that the Claimant has difficulty assisting with bathing due to her lack of oxygen. Sometimes she is unable to participate at all. The claimant's grandson testified that the Claimant has only 15% function of her heart. The Claimant was assessed as needing physical assistance during the assessment.

***Dressing***, which is under Functional Levels: The Claimant's ability to assist in dressing varies and at times she is unable to participate at all due to her changing medical condition. The claimant is able to assist to some degree most days. The Claimant was assessed as needing physical assistance during the assessment.

***Grooming***, which is under Functional Levels in the home: The Claimant's ability to assist in grooming varies and at times she is unable to participate at all due to her medical condition. The claimant is able to assist to some degree most days. The Claimant was assessed as needing physical assistance during the assessment.

***Hearing***, which is under Functional Levels in the home: Testimony was presented that indicates claimant has impaired hearing needs a hearing aid. The Claimant was assessed as impaired/correctable during the assessment.

***Orientation***, which is under Functional Levels: The Claimant was assessed as oriented x 3. The Department testified she was oriented to time, place and date during the assessment. Testimony was presented indicating the Claimant did not know the date during the assessment, and only indicated it was "morning" as to the time factor. The claimant's grandson testified that the Claimant is disoriented daily due to oxygen level problems.

- 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 received 24 points on a PAS completed by WVMi in October 2006 in conjunction with an annual reevaluation. For the previous level of care, "D" the claimant would require at least 26 points.
- 3) Evidence and testimony presented during the hearing supports the need for an additional point to be awarded in the area of orientation under Functional Abilities. The evidence and testimony supports the finding of assessment at a level two (2), which will award the claimant an additional point.
- 4) Evidence and testimony presented during the hearing supports the Department's assessment of level of care determination in the areas of bathing, dressing, grooming, and hearing and no point adjustments will be necessary in those areas.
- 5) The total amount of points assessed amount to twenty five (25), which will support the Department's final assessment of level of care "C" for the PAS assessment completed in October 2006.

### **IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** 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 8th Day of June 2007.**

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**Cheryl McKinney  
State Hearing Officer**