



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

March 23, 2007



Dear Mr. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 16, 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 B 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 C to Level B.

Sincerely,

Cheryl McKinney  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Libby Boggess, BOSS  
WVMI  
[REDACTED]

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

██████████  
**Claimant,**

**v.**

**Action Number: 06-BOR-3321**

**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 February 16, 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 February 16, 2007 on a timely appeal filed November 20, 2006.

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], Homemaker, [REDACTED], Witness

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 (PAS) assessment and supporting forms dated November 2, 2006
- D-3 Eligibility Determination dated November 3, 2006

### **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 November 2, 2006 and determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse assigned 16 points in her evaluation of the level of care the claimant requires.
- 3) Six (6) points were assigned for Medical Conditions and Symptoms. One (1) point was assessed for stage one decubitus. One (1) point was assessed for vacating in the event

of an emergency. Seven (7) points were assessed in the area of functional abilities in the home. One (1) point was assessed for medication administration.

- 4) Witnesses for the Claimant raised issues in the following areas:

**Eating**, which is under Functional Abilities: The WVMI nurse assessed the claimant at a level one (1) and stated the claimant was observed holding a razor and shaving his face during the Pre-Admission screening conducted November 2, 2006. The Department indicated they determined this demonstrated his motor skills were intact, therefore arriving at the assessment of level one (1). The claimant disagreed with this assessment and states he tires easily due to the pain and medications he is taking. He is suffering from numerous medical conditions, several of which are classified as “severe”. He has Chronic Fatigue Syndrome, and has severe peptic ulcer disease, having had part of his stomach removed. The claimant reports that he spends half (1/2) his day in bed due to the severe pain he experiences. The claimant stated his homemaker usually prepares his food and brings it to him after cutting the food in pieces for him.

**Communication**, which is under Functional Abilities: The Claimant was assessed at a level one (1) and awarded no points for communication, since the nurse determined he was able to communicate with her during the assessment. The nurse noted in the comments section of the Pre-Admission Screening form that the claimant indicated he gets tired and states people have a hard time understanding him. He reported that his aunt has hung up on him during telephone conversations because his voice gets so low. The claimant disagrees with the nurse’s assessment and stated that he has trouble communicating on a daily basis with people due to fatigue and medication 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 16 points on a PAS completed by WVMi in November 2006 in conjunction with an annual reevaluation. For the next higher level of care, "C" the claimant would require two (2) additional points.
- 3) Evidence and testimony presented during the hearing supports the need for an assessment of level two (2) for communication, bringing the total available points to 17, however this is not sufficient to increase the level of care determination to level "C". The evidence and testimony does not support a need to change the eating assessment.
- 4) The Claimant's total number of points is 17, which is indicative of a Level of Care "B" and renders the Claimant eligible for (93) hours per month of homemaker services.

### **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 23<sup>rd</sup> Day of March 2007.**

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**Cheryl McKinney  
State Hearing Officer**