



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

April 5, 2007

Dear Mrs. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 4, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce the homemakers hours due to a Level of Care determination.

In arriving at a decision, the State Hearings 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 and Disabled Waiver Services Program is based on current policy and regulations. Some of these regulations state as follows:

The ADW Program is defined as a long-term care alternative that provides services that enable an individual to remain at or return home rather than receiving nursing facility (NF) care. Specifically, ADW services include Homemaker, Case Management, Consumer-Directed Case Management, Medical Adult Day Care, Transportation, and RN Assessment and Review. (Aged/Disabled Home and Community Based Services Manual § 501 PROGRAM DESCRIPTION).

The information submitted at your hearing revealed: Your homemaker hours will be reduced from a "C" to a "B" level of care.

It is the decision of the State Hearings Officer to UPHOLD the PROPOSAL of the Department to determine your correct Level of Care.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: State Board of Review
Ms. [REDACTED] RN – West Virginia Medical Institute
Ms. Libby Boggess, RN – Bureau of Senior Services
Ms. [REDACTED], Case Manager - CWVAS

V.

**West Virginia Department of
Health and Human Resources,**

DECISION OF THE STATE HEARING OFFICER

This is a report of the State Hearing Officer resulting from a fair hearing concluded on April 5, 2007 for Mrs. _____. 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 originally scheduled for February 28, 2007 on a timely appeal filed January 8, 2007. The Case Management Agency requested the hearing to be rescheduled for the same day as the Claimant's husband.

The Program entitled Aged and Disabled Waiver Services is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

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III. PARTICIPANTS:

_____, Case Manager – Central West Virginia Aging Services, Inc.

_____, Daughter

_____, Daughter

Libby Boggess, RN – Bureau of Senior Services (BoSS)

_____, RN – West Virginia Medical Institute (WVMI)

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

* Participated by conference call.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is: Should the Claimant's Level of Care be reduced according to the Pre-Admission Screening (PAS) form dated December 7, 2006?

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual Policy §503.1 MEDICAL ELIGIBILITY; § 503.2.1 LEVELS OF CARE CRITERIA and; § 503.2.2 LEVELS OF CARE SERVICE LIMITS

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Aged/Disabled Home and Community Based Services Manual Policies

D-2 PAS dated 12/07/06

D-3 Notice of Decision dated 12/28/06

D-4 Medical Necessity Evaluation Request dated 11/3/06

Claimants' Exhibits:

Physician's Diagnosis dated 02/20/07

VII. FINDINGS OF FACT:

- 1) This issue involves a proposed reduction in homemaker hours due to a Level of Care Determination.

- 2) The Claimant's Physician submitted a Medical Necessity Evaluation Request for additional hours to the West Virginia Medical Institute (WVMI) on November 3, 2006 (Exhibit D-4).
- 3) WVMI is the Quality Improvement Organization under contract with the Bureau for Medical Services, who determines medical eligibility for the Aged and Disabled Waiver Services Program.
- 4) WVMI completed a Pre-Admission Screening Form (PAS) for Aged and Disabled Waiver Services on December 7, 2006 (Exhibit D-2).
- 5) The WVMI RN's assessment indicated the Claimant's homemaker hours should be reduced from a Level "C" (124 hours per month) to a Level "B" (93 hours per month). The assessment of the Claimant's functional levels was based only on the day of the visit.
- 6) WVMI issued a Notice of Decision letter to the Claimant on December 28, 2006 (Exhibit D-3). It stated in part:

You have been determined medically eligible to continue to receive in-home services under the Aged and Disabled Waiver Program. The number of homemaker service hours approved is based on your medical needs, and cannot exceed 93 hours per month.
- 7) The Claimant requested a fair hearing to appeal the proposed reduction in homemaker hours.
- 8) At the hearing, the BoSS RN requested to stipulate the Level of Care Policy (Exhibit D-1). There were no objections from the participants.
- 9) The WVMI RN Reviewed the Pre-Admission Screening Form (PAS) assessed on December 7, 2006 (Exhibit D-2). The PAS had a total of thirteen (13) points.
- 10) The persons participating in the assessment on December 7, 2006 were: the Claimant; her Husband; the Homemaker RN; and a Homemaker.
- 11) The areas of dispute were with Question #23 (c) Dyspnea (Difficulty Breathing); (d) Significant Arthritis; and (e) Paralysis.
- 12) The WVMI RN received information from the Claimant's Physician dated March 20, 2007 (Exhibit C-1). The information was submitted on a prescription pad and stated:

Patient suffers from dyspnea and arthritis, and stroke with hemiplegia.

- 13) The BoSS RN objected to Claimant's Exhibit C-1 because it was dated March 20, 2007, which was several months after the December 7, 2006 PAS.
- 14) The State Hearing Officer asked the BoSS RN if there were time limits for submitting evidence/documentation in Level of Care hearings.
- 15) The BoSS RN testified that there were no time limits specified in the ADW policy. The objection was overruled.
- 16) The WVM RN determined that Claimant's Exhibit C-1 did not state how long the Claimant had suffered from the medical conditions in dispute. The Claimant's Exhibit did not change the assessment to add additional points.
- 17) The Case Manager attempted to submit a PAS completed in 2005 showing that the areas in dispute were appropriately marked.
- 18) The State Hearing Officer did not allow the submission of the 2005 PAS based on Aged/Disabled Home and Community Based Services Manual § 503.4 MEDICAL REEVALUATION which states in part:

Annual reevaluations for medical necessity for each ADW member must be conducted.

- 19) There was no additional supporting documentation and/or testimony to award additional points in the areas of Dyspnea; Significant Arthritis; and Stroke with Hemiplegia.
- 20) Aged/Disabled Home and Community Based Services Manual 503.1 MEDICAL ELIGIBILITY:

A QIO under contract to BMS determines medical eligibility for the ADW Program

- 21) Aged/Disabled Home and Community Based Services Manual § 503.2.1 LEVELS OF CARE CRITERIA:

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 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 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 possible is 44.

**22) Aged/Disabled Home and Community Based Services Manual § 503.2.2
LEVELS OF CARE SERVICE LIMITS:**

<u>Level</u>	<u>Points Required</u>	<u>Hours Per Day</u>	<u>Hours Per Month</u>
Level A	5-9	2	62
Level B	10-17	3	93
Level C	18-25	4	124
Level D	26-44	5	155

VIII. CONCLUSIONS OF LAW:

- 1) The policy states that homemaker services will be based on four levels of care. Points will be determined according to functional ability.
- 2) The Claimant's medical documentation and testimony does not support the assignment of additional points in the areas of Dyspnea; Significant Arthritis; and Paralysis.

IX. DECISION:

It is the decision of this State Hearing Officer to UPHOLD the PROPOSAL of the Department in this particular matter.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 5th Day of April, 2007.

**Ray B. Woods, Jr., M.L.S.
State Hearing Officer**