



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 1736  
Romney, WV 26757

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

May 9, 2007

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 2, 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,

Sharon K. Yoho  
State Hearing Officer  
Member, State Board of Review

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

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 07-BOR-535**

**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 May 2, 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 May 2, 2007 on a timely appeal filed January 10, 2007.

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] Coordinating Council for Independent Living (CCIL)  
[REDACTED] Homemaker RN, WV Choice

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services, BoSS, by speakerphone

[REDACTED], RN, WVMI, by speakerphone

Presiding at the hearing was Sharon K. Yoho, 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 November 20, 2006

D-3 Eligibility Determination dated November 20, 2006

D-4 Notice of reduction in benefits dated December 28, 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 in November 2006.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on November 20, 2006 and determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse assigned 15 points in her evaluation of the level of care the claimant requires. This falls in the Level B of care.

3) Four points were assigned for Medical Conditions and Symptoms. One point was assessed for vacating in the event of an emergency. Ten points were assessed in the area of functional abilities in the home. The total points assessed were Fifteen.

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

**Dysphagia**, which is under Medical Conditions/Symptoms: The Claimant states that she was found to have a Hiatal Hernia during a January 4, 2007 test. No diagnosis of Dysphagia was identified with this finding of the Hernia. At the time of the assessment, there was no related diagnosis or prescribed medication.

**Angina at Exertion**, which is under Medial Conditions/Symptoms: At the time of the November assessment, the claimant did complain of some Angina however; there was no supporting diagnosis or prescribed medication. Since the date of the PAS, the claimant has been advised that she needs Open Heart Surgery.

**Medication**, The Claimant advised the evaluating nurse at the assessment that she was able to set up and administer her own medication independently without any problems. At the hearing, the Claimant reported that due to equilibrium problems, she now needs help with her medications.

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 15 points on a PAS completed by WVMi in November 2006 in conjunction with an annual reevaluation. For the previous level of care, "C" the claimant would require three additional points.
- 3) Evidence and testimony presented during the hearing, did not support the need for any additional points to be awarded to the Claimant.
- 4) There was a lack of evidence to support a diagnosis of Angina and Dysphasia and a lack of a prescribed medication to treat related symptoms. Policy is clear in 503.2.1 that these conditions must be based on medical evidence presented by appropriate medical professionals.
- 5) Information provided to the evaluating nurse at the day of assessment regarding administration of medication was clear that the claimant was able at that time to self medicate without assistance from others. It is possible that since that time, the Claimant's equilibrium may be adversely affecting her ability to medicate independently.
- 6) The evaluating nurse correctly assessed a total number of fifteen (15) points, 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 9<sup>th</sup> Day of May 2007.**

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**Sharon K. Yoho  
State Hearing Officer**