



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 468  
Hamlin, WV 25523

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

July 17, 2009

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 23, 2009. 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 501)

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 **reverse** 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 Henson  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
BoSS  
WVMI  
MountainHeart Community Services

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

-----,

**Claimant,**

**v.**

**Action Number: 09-BOR-1192**

**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 June 23, 2009 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 June 23, 2009 on a timely appeal filed April 22, 2009.

It should be noted that the Claimant's benefits have continued pending a hearing decision.

**II. PROGRAM PURPOSE:**

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.

**III. PARTICIPANTS:**

Claimant's Witnesses:

-----, Claimant

-----, Case Manager, Mountain Heart Community Services

-----, Homemaker, Integrated Resources

Department's Witnesses:

Angel Khosa, BOSS, Department's Representative  
Michelle Wiley, WVM

Presiding at the hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

It should be noted that the Department participated by telephone.

#### **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 501

#### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

##### **Department's Exhibits:**

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 501
- D-2 Pre-Admission Screening (PAS) assessment completed on April 3, 2009

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

None

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

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter called ADW, was undergoing an annual reevaluation to verify continued medical eligibility in April 2009.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (PAS) Pre-Admission Screening form (D-2) on April 3, 2009 and determined that the Claimant continues to meet the medical eligibility criteria.
- 3) Six (6) points were assessed for Medical Conditions and Symptoms. One (1) point was assessed for ability to vacate a building. Seven (7) points were assessed in the area of functional abilities in the home; specifically: bathing, dressing, grooming, total incontinence of bladder, transferring and walking. One (1) point was assessed for administering medications. A total of fifteen (15) points were assessed during the

screening and she was assessed as level (B). The Claimant would need three (3) additional points for a total of eighteen (18) to be assessed at level (C).

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

***Bathing***, which is under Functional Levels: The Claimant was rated as “level 2”, needing physical assistance with this activity. The WVMi nurse recorded the following on the PAS:

She does have a shower chair. She says that at times she requires assistance in/out of the shower and other times she does not. HM (homemaker) washes her back for her. She says that she tries to complete all other aspects of bathing herself. Was assessed as requiring physical assistance with bathing.

Witnesses for the Claimant stated that often when she has seizures she requires total care. Sometimes she has seizures every day. The Claimant takes four (4) different medications for seizures but continues to have episodes. She was having a good day the date of assessment. The Homemaker stated that after a seizure they bathe her in bed often with a bed pan and she does not assist. The Claimant’s Case Manager stated that their notes on care for the Claimant show that the Claimant is considered total care for all ADL’s (Activities of Daily Living) following a seizure. Although the Claimant mentioned having seizures during the assessment, the Department did not consider the Claimant’s functional level following seizures when determining her needs. The WVMi nurse stated that she has been trained to only consider the Claimant’s functional abilities on the date of assessment when assessing her level of care needs.

***Dressing***, which is under Functional Levels: The Claimant was rated as “level 2” needing physical assistance with this activity. The WVMi nurse recorded the following on the PAS:

HM (homemaker) has to assist with getting the clothing over her head and has to assist with zipping clothing. HM assists with applying her bra. Says that she can apply the lower body clothing herself. Says that she tries to tie her own shoes. Was assessed as requiring physical assistance with dressing.

Witnesses for the Claimant report that after seizures the Claimant requires total care and cannot assist at all in dressing. The homemaker must get her out of bed and dress her without the Claimant’s participation. Again, the Department did not consider this because she was not in this condition the date of assessment.

***Transferring***, which is under Functional Levels: The Claimant was rated as “Level 2”, needing supervision and an assistive device. The WVMi nurse recorded the following on the PAS:

She does have a walker that she uses in the home. She says she staggers when she walks and does fall at times. During the visit she pushed off of the couch to stand, having mild difficulty with this. She

walked in the home with the HM supervising her. Was assessed as requiring supervision/assistive device with standing/walking.

Witnesses for the Claimant state that after a seizure she cannot get out of bed due to weakness and requires total assistance to transfer. At times, she has stayed with her elderly sister until she recovers. Again, the Department did not consider the after effects of the seizures since she was not in this condition on the date of assessment.

**Walking**, which is under Functional Levels: The Claimant was rated as “level 2”, needing supervision and an assistive device. The WVMi nurse’s recording above under the category for transferring included her notes for walking.

Witnesses for the Claimant state she has a walker and at times will try to use it when alone in her home after a seizure, but she often falls. The Homemaker will hold onto her as she walks after a seizure.

**Wheeling**, which is under Functional Levels: The Claimant was rated as “level 2”, wheels independently. The WVMi nurse recorded the following on the PAS:

She has a wheelchair that she uses in the home “sometimes”. She says that she can wheel herself in the wheelchair. I asked if she required assistance through doorways of the home. She says, “I can get through the doors.” Was assessed as being able to wheel independently.

Witnesses for the Claimant report that someone must push her in the wheelchair after seizures due to the extreme weakness she experiences.

5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2.1 and 5-1.3.2.2 (D-1):

There are four levels of care for 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)
- #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

#35- 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

- 6) Aged/Disabled Home and Community Based Waiver Policy Manual Section 501.3.4 states in pertinent part:

#### **MEDICAL REEVALUATION**

Annual reevaluations for medical necessity for each ADW member must be conducted. The process is as follows:

C. When the home visit is made, the QIO RN, through observation and/or interview process, completes the PAS (Attachment 14). The RN will record observations and findings regarding the member's level of function in the home. RNs do not render medical diagnoses.

### **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 fifteen (15) points on a PAS completed by WVMi in April 2009 in conjunction with an annual evaluation, which resulted in a reduction in level of care. For the previous level of care, the Claimant would need at least three (3) additional points for a total of eighteen (18).
- 3) Evidence and testimony presented during the hearing supports the need for level (C) care. The evidence shows that the Claimant has seizures often and this significantly affects her functional abilities in the home. The Claimant is extremely weak and requires total care in many areas as a result.
- 4) The Department's decision to disregard the Claimant's functional abilities after seizures is not reasonable. Policy dictates that the nurse is to determine functional abilities through observation and/or interviewing. The WVMi nurse failed to effectively interview on the date of assessment by declining to consider the effects the seizures have on the Claimant's capabilities. The Claimant is often in need of extra assistance during those times.
- 5) The totality of the evidence shows the Claimant requires total care a great deal of the time in the areas of dressing and bathing, and is awarded "level 3" in these areas. This results in an additional point for each category, for a total of two (2) points. The evidence also shows the Claimant requires "level 3" care in transferring, walking, and use of a wheelchair, for a total of an additional three (3) points. The total additional points awarded are five (5).

- 6) The total amount of points assessed amount to twenty (20), and support the finding of Level “C” for this Claimant.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** 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 15th Day of April, 2009**

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**Cheryl Henson  
State Hearing Officer**