



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

September 4, 2009

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 2, 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 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 WVM. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual 501.3)

Information submitted at your hearing reveals that you continue to require the degree of care and services necessary to qualify medically for the Aged/Disabled Waiver Program and your documented medical conditions confirm that your Level of Care should be a Level "C" rating. As a result, you are eligible to receive four (4) hours per day or 124 hours per month of homemaker services.

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.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

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

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

-----,

**Claimant,**

v.

**Action Number: 09-BOR-1257**

**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 September 4, 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 telephonically on September 2, 2009 on a timely appeal filed May 27, 2009 and received by the Hearing Officer on July 8, 2009.

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

**II. PROGRAM PURPOSE:**

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  
-----, Claimant's witness  
Kay Ikerd, RN, Department's witness  
Courtenay Smith, RN, Department's witness

Presiding at the hearing was Pamela L. Hinzman, 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 501.3.2.1 and 501.3.2.2

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

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 501.3.2.1 and 501.3.2.2
- D-2 Pre-Admission Screening (PAS) assessment completed on March 27, 2009
- D-3 Notice of Decision dated March 31, 2009

**Claimant's Exhibits:**

- C-1 Information from Dr [REDACTED] dated August 25, 2009

**VII. FINDINGS OF FACT:**

- 1) The Claimant, a recipient of Aged/Disabled Waiver (ADW) Medicaid benefits, underwent an annual reevaluation to verify continued medical eligibility for the program.
- 2) West Virginia Medical Institute (WVMI) Nurse Tammy Kessel completed a medical assessment (D-2) on March 27, 2009 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 17 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care "B" - eligible for three (3) hours per day or 93 hours per month of homemaker services. It should be noted that the Claimant previously qualified for a Level of Care "C"- eligible for four (4) hours per day or 124 hours per month of homemaker services.

- 3) The Claimant was sent notification on March 31, 2009 (D-3) advising her of the proposed reduction in homemaker service hours.
- 4) -----, Quality Assurance Director for Central West Virginia Aging Services, referred to an August 25, 2009 letter from Dr. [REDACTED] (C-1). In the letter, the physician verified that the Claimant has spina bifida with paraplegia, contractures of the knees, and arthritis in her back and legs. Page 3 of 8 of the PAS includes documentation concerning the WVMI Nurse's assessment of medical conditions/symptoms. On the PAS, the nurse wrote that the Claimant believed she had arthritis, but indicated she had not been formally diagnosed and was taking no medication for the condition. In addition, the Claimant and her cousin had reported that the Claimant's knees are "locked and frozen." The PAS states that no diagnosis of contractures was noted on the physician's referral and the Claimant was taking no medication for the condition. -----testified that the Claimant's legs have obvious contractures. Ms. [REDACTED] testified that she had asked the Claimant's homemaker/RN to provide verification of the contracture diagnosis, however no information was received. -----testified that the homemaker/RN is no longer employed by her agency and that the Claimant has had the diagnoses for some time.
- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Sections 501.3.2.1 and 501.3.2.2 (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)
- #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 obtained on the PAS assessment tool.
- 2) The Claimant was awarded 17 points as the result of a PAS completed by WVMi in March 2009 in conjunction with her annual medical evaluation.
- 3) As a result of information presented during the hearing, two (2) additional points are awarded to the Claimant for the medical conditions of contractures and significant arthritis. Information concerning these conditions was provided during the assessment and policy does not specifically require a physician diagnosis under the medical conditions/symptoms section of the PAS. In addition, the Claimant's physician has verified the diagnoses and her witness testified that the conditions existed at the time of the assessment.
- 4) The addition of two (2) points brings the Claimant's total number of points to 18, which is indicative of a Level of Care "C" (18 to 25 points).

**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 4th Day of September, 2009.**

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**Pamela L. Hinzman  
State Hearing Officer**