



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1400 Virginia Street  
Oak Hill, WV 25901

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

January 9, 2009

\_\_\_\_\_, Esquire  
Legal Aid of WV  
922 Quarrier Street, Fourth Floor  
Charleston, WV 25301

RE: \_\_\_\_\_  
Action # 08-BOR-1790

Dear \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 9, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to reduce \_\_\_\_\_'s homemaker hours from Level D care to Level C.

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/Disabled Waiver program is based on current policy and regulations. Some of these regulations state as follows: 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 Services Waiver Policy and Procedures Manual, §501.3).

The information submitted at your hearing revealed that \_\_\_\_\_ no longer meets the medical criteria necessary to continue receiving services under Level D care.

It is the decision of the State Hearings Officer to **uphold** the decision of the Department to reduce \_\_\_\_\_'s homemaker hours to Level C care.

Sincerely,

Kristi Logan  
State Hearings Officer  
Member, State Board of Review

Cc: Erika H. Young, Chairman, Board of Review  
\_\_\_\_\_, Claimant  
Bureau of Senior Services  
West Virginia Medical Institute  
Central WV Aging Services

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

\_\_\_\_\_,

**Claimant,**

**v.**

**Action Number: 08-BOR-1790**

**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 December 9, 2008 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 December 9, 2008 on a timely appeal, filed July 2, 2008.

It should be noted here that the claimant's benefits have been 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:**

\_\_\_\_\_, Esquire, Legal Aid of WV  
\_\_\_\_\_, Claimant's Daughter and Homemaker  
\_\_\_\_\_, Homemaker RN  
[REDACTED] Case Manager, Central WV Aging Services

Mary McQuain, Esquire, Assistant Attorney General (by phone)  
Kay Ikerd, RN, Bureau of Senior Services (by phone)  
Melody Lehosit, RN, West Virginia Medical Institute (by phone)

Presiding at the Hearing was Kristi Logan, 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 or not the Department's decision to reduce Claimant's homemaker hours was correct.

### **V. APPLICABLE POLICY:**

Aged/Disabled Waiver Policy and Procedures Manual § 501.3.2.1 and 501.3.2.2

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

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

- D-1 Aged/Disabled Waiver Policy and Procedures Manual § 501.3.2.1 and 501.3.2
- D-2 Pre-Admission Screening Form dated June 23, 2008
- D-3 Notification Letter dated June 27, 2008
- D-4 Hearing Request received July 2, 2008
- D-5 Informed Consent and Release of Information Form dated June 23, 2008
- D-6 Legal Aid of West Virginia Authorization and Release Form dated July 1, 2008
- D-7 Medical Necessity and Evaluation Request Form dated May 13, 2008
- D-8 Additional Medical Information dated June 26, 2008 from Dr. [REDACTED]
- D-9 Blank Pre-Admission Screening Form (Attachment 14)

#### **Claimants' Exhibits:**

- C-1 Correspondence from Dr. [REDACTED] dated September 9, 2008
- C-2 Pre-Admission Screening Form dated August 28, 2007
- C-3 RN Assessment and Plan of Care dated February 19, 2008

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

- 1) Claimant was re-evaluated for the Aged/Disabled Waiver program for continued eligibility on June 23, 2008. A Pre-Admission Screening (PAS) form was completed that date by Melody Lehosit, RN, of the West Virginia Medical Institute (WVMI). Claimant was awarded a total of 21 points on the PAS (D-2).

- 2) A notification letter dated June 27, 2008 was issued and read in part (D-3):

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 124 hours per month.

Claimant's homemaker hours were reduced from Level D care of 155 hours a month to Level C, 124 hours a month. In order for Claimant to continue receiving Level C care, five (5) additional points were required.

- 3) [REDACTED] Claimant's attorney, stated they were contesting the functional abilities of eating, dressing, grooming, walking and orientation in which Claimant did not receive the maximum allowable points. They were also contesting that Claimant did not receive a point for a diagnosis of dementia or related condition.

- 4) \_\_\_\_\_, Claimant's homemaker and daughter, testified that she has to prepare her mother's meals for her. Claimant can feed herself but \_\_\_\_\_ cuts her food up for her. \_\_\_\_\_ stated that if she didn't cut up the food, her mother would take too big of bites and choke. She also stated Claimant is unable to cut up her own food.

\_\_\_\_\_ stated her mother is disoriented daily. She is often forgetful and confused. Some days she cannot spell her own name and does not recognize certain items. She asks the same questions repeatedly.

\_\_\_\_\_ stated she assists her mother with dressing. Claimant can raise her legs and arms up briefly, but cannot hold them up for long. \_\_\_\_\_ will have to hold Claimant's legs to get her pants on and puts her shoulders in the sleeves. Claimant cannot reach her feet at all to put on shoes. \_\_\_\_\_ stated Claimant cannot participate in dressing at all 3-4 times a week.

\_\_\_\_\_ stated since Claimant cannot reach her feet, she must care for her mother's toe nails completely. Claimant can sometimes file her nails but there are also times that her mother's confusion is so bad that she doesn't understand what to do with a nail file.

\_\_\_\_\_ testified that most of the time she must physically assist Claimant when she is walking. Claimant uses a walker and \_\_\_\_\_ will either hold onto her arm or place her hands on her back while she is walking. \_\_\_\_\_ stated this is necessary because Claimant is unsteady on her feet and she needs to stabilize her.

- 5) Claimant was awarded a point for a diagnosis of Alzheimer's, dementia or related condition on the August 2007 PAS (C-2). Mr. [REDACTED] contends that dementia is a condition that does not improve and Claimant should again be awarded a point in this area. Presented into evidence was a letter dated September 9, 2008 from Claimant's

- 6) Meldoy Lehosit, RN with WVMi completed Claimant's assessment in June 2008 and gave testimony regarding the PAS. Ms. Lehosit testified that Claimant had strong hand grips when they were tested during the assessment. Claimant also signed the consent form with no difficulty and was able to grip her walker. Ms. Lehosit did not give a point for eating because Claimant would be able to cut her own food, and the fact that it was done for her was a courtesy.

Claimant was rated as physical assistance for dressing as she was able to participate somewhat in dressing herself. Claimant was able to hold out her arms and legs to be dressed. Since Claimant was able participate in her dressing, she could not be rated as total care.

Claimant was rated as physical assistance in grooming. Ms. Lehosit stated that Claimant cannot reach the top of her head and her daughter assists with shampooing and nail care. Due to her sufficient hand grips, Claimant would be able to file her own finger nails. Her participation in grooming does not qualify for a total care rating.

Ms. Lehosit stated on the day of the assessment, Claimant was able to walk with the aid of her walker. \_\_\_\_\_ supervised her from behind.

Ms. Lehosit stated that although \_\_\_\_\_ was the primary information provider the day of the PAS, Claimant was able to answer questions appropriately. Due to her narcolepsy, Claimant dozed often during the assessment.

Ms. Lehosit did not award a point for dementia as there was not diagnosis provided on the Medical Necessity and Evaluation form nor was Claimant prescribed any medication for dementia or a related condition (D-7). Claimant was given a point under Medical Conditions for depression due to the prescription Fluoxetine.

- 7) Aged/Disabled Waiver Policy Manual § 501.3.2.1 and 5.1.3.2 states points will be awarded as follows:

#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 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

### **VIII. CONCLUSIONS OF LAW:**

- 1) Policy provides that an individual's Level of Care (LOC) for the Aged/Disabled Waiver Program is determined by the number of points awarded on the PAS assessment tool. Claimant was awarded 21 points on the June 2008 PAS.
- 2) According to the testimony provided, Claimant has periods of confusion and disorientation but also times when she is alert and oriented. Claimant was correctly rated as intermittent disorientation. No additional points can be awarded as Claimant would have to be totally disoriented.
- 3) Testimony provided revealed that Claimant participates in dressing. Since the homemaker does not provide total care in these areas, Claimant was correctly rated as requiring physical assistance. No additional points can be awarded.
- 4) Documentation from the PAS and testimony from the homemaker indicated that Claimant does not participate at all in grooming. Claimant cannot reach the top of her head or her feet so the homemaker must wash her hair and care for her toe nails. The PAS also stated the homemaker is responsible for Claimant's oral care. The homemaker testified that Claimant does not care for nails and does not even know what to do with a nail file. Claimant's lack of participation in grooming merits a rating of total assistance and an additional point.
- 5) Claimant was given a point under question # 34 for a diagnosis of dementia or related condition on her previous PAS. According to the August 2007 PAS, Claimant was awarded a point in this area for a diagnosis of a "mental disorder" (C-2, page 4 and page 7). An actual diagnosis of dementia or related condition was not specifically given, and was Claimant taking any medications for dementia or related condition in 2007, nor is there a current diagnosis or prescription medication. A point cannot be awarded in this area without sufficient documentation.
- 6) Testimony from the assessing nurse indicated that Claimant had sufficient hand strength to be able to cut her own food. However, credible testimony from the homemaker was

that Claimant cannot and will not cut her own and will choke as a result. An additional point can be awarded for physical assistance in eating.

- 7) Credible testimony from the homemaker revealed that Claimant requires hands on assistance with walking to stabilize her. An additional point can be given for one person assistance in walking.
- 8) Claimant has 23 points with the addition of three (3) points in the areas of eating and walking. A total of 25 points is required for Level D care. Claimant is no longer meets the medical criteria necessary for Level D care.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to reduce Claimant's homemaker hours from Level D care to Level C.

**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 January, 2009.**

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**Kristi Logan  
State Hearing Officer**