



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

Earl Ray Tomblin  
Governor

Patsy A. Hardy, FACHE, MSN, MBA  
Cabinet Secretary

November 19, 2010

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 17, 2010. Your hearing request was based on the Department of Health and Human Resources' action to deny your request for additional 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 the maximum units/hours which are reviewed and approved. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual 501.3)

Information submitted at your hearing reveals that the additional medical documentation you submitted to the Department was insufficient to raise your Level of Care from the current Level "C" rating (4 hours per day or 124 hours per month of homemaker services) to Level "D" (5 hours per day or 155 hours per month of homemaker services).

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny your request for an increase in 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



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

-----,

**Claimant,**

v.

**Action Number: 10-BOR-2039**

**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 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 November 17, 2010 on a timely appeal filed September 28, 2010.

**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

-----, RN, [REDACTED]

-----, Case Manager, [REDACTED]

Kay Ikerd, RN, Bureau of Senior Services

Caroline Ostand, RN, Nurse Reviewer, Innovative Resource Group

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the Department was correct in its action to deny the Claimant's request for additional homemaker service hours under the Aged/Disabled Waiver 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, 501.3.2.2 and 501.7.4
- D-2 Notice of Decision dated September 23, 2010
- D-3 Pre-Admission Screening (PAS) assessment completed on December 28, 2009
- D-4 RN Assessment Forms
- D-5 Letter from [REDACTED] M.D.
- D-6 Memorandum completed by Caroline Ostand

**Claimant's Exhibits:**

- C-1 ADW Patient Contact Form
- C-2 Nursing Notes

**VII. FINDINGS OF FACT:**

- 1) The Claimant, a recipient of Aged/Disabled Waiver (ADW) Medicaid benefits, submitted a request (D-6), via [REDACTED] to the Department for additional homemaker service hours on September 16, 2010. It should be noted that the Claimant's annual Pre-Admission Screening (PAS) had been completed on December 28, 2009, at which time she was assigned 18 points for documented medical conditions that require nursing services and met the criteria necessary to qualify as a Level of Care "C" – 18-25 points, eligible for four (4) hours per day or 124 hours per month of homemaker services.
- 2) Caroline Ostand, RN and Nurse Reviewer for Innovative Resource Group, reviewed the request for additional homemaker service hours and supporting documentation, and assigned the Claimant seven (7) additional points, bringing her total number of points to 25. The additional points failed to elevate the Claimant's Level of Care to Level "D" - 26-44 points, five (5) hours per day or 155 hours per month of homemaker service hours.
- 3) Innovative Resource Group sent notification to the Claimant on September 23, 2010 (D-2) advising her that her request for additional homemaker service hours had been denied.

- 4) Ms. Ostand testified that, as a result of documentation submitted from the Claimant's physician and [REDACTED] (D-4 and D-5), she awarded additional points for decubitus, physical assistance with eating, total assistance with bathing, dressing and grooming, total bowel incontinence and inability to administer medication.

The Claimant testified that she is now totally bedfast and depends on others to assist her. She indicated that her food must be brought to her, that she cannot bathe or dress herself, and that she uses a Hoyer Lift for transfers. -----, RN, of [REDACTED] testified that the Claimant lives alone and has limited support. She indicated that the Claimant has areas of skin breakdown because her movement is limited and she cannot be turned and repositioned on a regular basis. She also reported that the Claimant is totally incontinent of bowel and bladder.

Ms. Ostand indicated that the Claimant has already been awarded the maximum number of points available for total care in bathing, dressing and grooming, total incontinence of bowel and bladder, and two-person assistance in transferring. The Claimant had also been elevated from independent to physical assistance with eating as a result of the request for additional homemaker service hours.

- 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 18 points as the result of a PAS completed in December 2009 in conjunction with her annual medical evaluation. As the result of a request to increase her Level of Care, the Claimant was awarded seven (7) additional points in September 2010, bringing her total number of points to 25.
- 3) As a result of information presented during the hearing, no additional points can be awarded as the Claimant had already received the maximum number of points available in the functional areas she and her witnesses addressed.
- 4) The Claimant's total number of points remains at 25, rendering her eligible to receive a Level "C" Level of Care.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Agency's action to deny the Claimant's request to increase her Level of Care/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 19th Day of November, 2010.**

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**Pamela L. Hinzman  
State Hearing Officer**