



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

**Joe Manchin III  
Governor**

**Martha Yeager Walker  
Secretary**

July 18, 2005

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 6, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to decrease homemaker hours under the Aged Disabled Waiver, A/DW, 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 A/DW program is based on current policy and regulations. Some of these regulations state as follows: The Aged/Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who meet all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for a nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. [Aged/Disabled (HCB) Services Manual ' 570- 570.1b (11/1/03)].

The information which was submitted at your hearing revealed that at the time of the March 24, 2005 Pre-Admission Assessment, you did meet the eligibility criteria for level of care (D) under the Aged/Disabled Waiver Program which you were previously assessed.

It is the decision of the State Hearings Officer to reverse the proposed action of the Department to decrease homemaker hours to a level C under the A/DW program.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review  
[REDACTED] PHSS - Boggess, BoSS - Keeney, WVM

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

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**Claimant,**

**v. Action Number:**

**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 July 6, 2005 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 6, 2005 on a timely appeal, filed April 6, 2005.

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:**

Claimant's Witnesses:

\_\_\_\_\_, claimant

\_\_\_\_\_, Potomac Highlands Support Services

\_\_\_\_\_, \_\_\_\_\_ County Senior & Family Services

\_\_\_\_\_, claimant's daughter

\_\_\_\_\_, Homemaker

Department's Witnesses:

Libby Boggess, Bureau of Senior Services by phone

Jane Meadows, Nurse WVMJ by phone

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 their decision to reduce homemaker hours under the Aged/Disabled Waiver (HCB) program.

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

Aged/Disabled Home and Community Based Service Manual §570 and §580

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

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

D-1 Aged/Disabled Home and Community based Services Manual §570.1 c,d. and §580.2

D-2 Eligibility Determination dated March 24, 2005

D-3 Pre-Admission Screening, PAS, completed March 24, 2005

D-4 Notice of reduction in homemaker hours dated April 1, 2005

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

C-1 Letter from \_\_\_\_\_ M.D.

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

- 1) Claimant is an 83-year-old female who is a bilateral leg amputee below the knee. She has diagnosis of Congestive Heart Failure, Arthritis, and Diabetes.

- 2) Ms. \_\_\_\_\_'s Aged Disabled Waiver eligibility was undergoing an annual evaluation on March 24, 2005. A Pre-Admission Screening (PAS) was completed in the home with the claimant and a granddaughter present. The granddaughter was not a participant in the evaluation. This PAS evaluation determined that the claimant remained eligible for the Age/Disabled Waiver program however; it was determined that the level of care that she required had decreased from a level D to a level C.
- 3) The evaluation assigned 23 points in determining that a level C was appropriate. Areas in question raised at this hearing were in the claimant's ability to eat without the assistance of others, difficulty in swallowing (aphasia), and mental disorder.
- 4) The claimant does require assistance with eating. She must have her food cut up on her plate for her and her bread buttered. She also was reported to choke while eating which requires monitoring during meals.
- 5) Ms. \_\_\_\_\_ had informed the evaluating nurse at the assessment that she did not have difficulty swallowing however, the report of choking at meals would cause this to be in question. The nurse testified that she observed the claimant drinking from a cup during the assessment. The choking was reported to occur while eating and sometimes she is unable to finish her meal due to choking. Aphasia is apparent.
- 6) Ms. \_\_\_\_\_ is taking two prescribed medications that could be for treatment of anxiety. The PAS on page three lists .5 mg. of Alprazolam as a medication prescribed for anxiety. Amitriptyline of 25 mg. is listed on the PAS as being prescribed for sleep and pain. Ms. \_\_\_\_\_ states that the Amitriptyline, when it was first prescribed was prescribed for depression. Treatment for a mental condition is apparent.
- 7) Aged/Disabled Home and Community Based Services Manual § 570 – Program Eligibility for Client:

Applicants for the A/DW Program must meet all of the following criteria to be eligible for the Program:

- A. Be 18 years of age or older
  - B. Be a permanent resident of West Virginia. The individual may be deinstitutionalized from a NF in any county of the state, or in another state as long as his permanent residence is in West Virginia.
  - C. Be approved as medically eligible for NF Level of Care.
  - D. Meet the Medicaid Waiver financial eligibility criteria for the program as determined by the county DHHR office, or the SSA if an active SSI recipient.
  - E. Choose to participate in the A/DW Program as an alternative to NF care.
- 8) Aged/Disabled Home and Community Based Services Manual § 570.1.a – Purpose: The purpose of the medical eligibility review is to ensure the following:

- A. New applicants and existing clients are medically eligible based on current and accurate evaluations.
  - B. Each applicant/client determined to be medically eligible for A/DW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term services needs.
  - C. The medical eligibility determination process is fair, equitable and consistently applied throughout the state.
- 9) Aged/Disabled Home and Community Based Services Manual# 570.1.b – Medical Criteria: An individual must have five deficits on the PAS to qualify medically for the A/DW Program. These deficits are derived from a combination of the following assessment elements on the PAS:
- A. #24: Decubitus - Stage 3 or 4
  - B. #25: In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. a) and b) are not considered deficits.
  - C. #26: Functional abilities of individual in the home.
    - Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)
    - Bathing ---- Level 2 or higher (physical assistance or more)
    - Grooming--- Level 2 or higher (physical assistance or more)
    - Dressing ---- Level 2 or higher (physical assistance or more)
    - Continence-- Level 3 or higher (must be incontinent)
    - Orientation-- Level 3 or higher (totally disoriented, comatose)
    - Transfer----- Level 3 or higher (one person or two person assist in the home)
    - Walking----- Level 3 or higher (one person or two person assist in the home)
    - Wheeling----- Level 3 or higher (must be Level 3 or 4 on walking in the home to use Level 3 or 4 for wheeling in the home. (Do not count outside the home)
  - D. #27: Individual has skilled needs in one or more of these areas B (g)suctioning , (h)tracheostomy, (i) ventilator , (k)parenteral fluids , (l)sterile dressings , or (m) irrigations.
  - E. #28: The individual is not capable of administering his/her own medication.
10. Aged/Disabled Home and Community Based Service Manual # 570.1.c,d: There are four levels of care for clients of ADW Homemaker services. Points will be determined as follows, based on the following sections of the PAS:
- #23 1 point for each (can have total of 12 points)
  - #24 1 point
  - #25 1 point for B, C, or D
  - #26 Level 1 - 0 points  
Level II - 1 point for each item A through I

Level III - 2 points for each item A through M; I (walking) must be equal to or greater than

Level III before points given for J (wheeling)

Level IV - 1 point for A, 1 point for E, 1 point for F, 2 points for G through M

#27 1 point for continuous oxygen

#28 - 1 point for B or C

#34 - 1 point if Alzheimer's or other dementia

#35 - 1 point if terminal

Level A	5-9 points	62 Hours Per Month
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Level B	10-17 points	93 Hours Per Month
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Level C	18-25 points	124 Hours Per Month
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Level D	26-44 points	155 Hours Per Month
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#### **VIII. CONCLUSIONS OF LAW:**

- 1) The Aged Disabled Waiver policy provides that an individual must be assigned 26 to 44 points to qualify as requiring a Level D in care, which is 155 hours per month in homemaker services and 18 to 25 for Level C.
- 2) The issues raised at the hearing were in the areas of Aphasia (swallowing) and Mental Disorder, which are listed in 570.1.c #23. Another area of concern was in Eating, which is an item listed in 570.1.c #26. It can be concluded by testimony of this claimant's caregivers that this claimant should have been assigned three (3) additional points for these areas. She needs her food cut up for her on her plate and she chokes often during meals due to swallowing problems. She is prescribed medication to treat a condition of depression.

#### **IX. DECISION:**

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the claimant should have been assigned 26 points during the PAS completion of March 24, 2005. With the authority granted to me by the WV State Board of Review I am further ruling to **reverse** the Agency's proposed action to decrease this claimant's homemaker services 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 18th Day of July, 2005.**

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**Sharon K. Yoho  
State Hearing Officer**