



**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 20, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 12, 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 16, 2005 Pre-Admission Assessment, you did not meet the criteria for the previously determined 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 uphold 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, WVMI

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

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 12, 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 12, 2005 on a timely appeal, filed April 18, 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

_____, RN, Potomac Highlands Support Services

_____, _____ Senior Center

_____, claimant's daughter

_____, Homemaker

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services by speakerphone

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 16, 2005

D-3 Pre-Admission Screening, PAS, completed March 16, 2005

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

VII. FINDINGS OF FACT:

- 1) Claimant is a 72-year-old female who has primary diagnosis of Hypertension, Atrial Fibrillation, and Non Insulin Dependent Diabetes.
- 2) Ms. _____'s Aged Disabled Waiver eligibility was undergoing an annual evaluation on March 16, 2005. A Pre-Admission Screening (PAS) was completed in the home with the claimant, her daughter and her homemaker present. 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 22 points in determining that a level C was appropriate. The recent deterioration in the claimant's condition was brought up. Since the time of the March PAS, the claimant now requires total care for bathing, dressing and grooming due to recent medical problems.
- 4) Other items of concern brought up at the hearing were in the areas of Bowel incontinence, contractures and aphasia.
- 5) The claimant is reported to have regular incontinence of her bowels and this was a condition of March 2005. Ms. [REDACTED] testified that this is a problem almost daily.
- 6) Ms. [REDACTED] does have contractures of her fingers. The ends of her fingers are drawn and she cannot straighten them. This condition is can be noted by visual observation.
- 7) Ms. [REDACTED] testified that Ms. [REDACTED] has a problem with aphasia. Ms. [REDACTED] at times has difficulty verbalizing what she wants to say and it sometimes takes her a long time to make her needs known.
- 8) 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
Level B	10-17 points	93 Hours Per Month
Level C	18-25 points	124 Hours Per Month
Level D	26-44 points	155 Hours Per Month

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 and Contractures, which are listed in 570.1.c #23. Another area of concern was Bowel incontinence, 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 (2) additional points for the areas of Contractures and Bowel incontinence. Policy does not permit a point to be assessed for Aphasia if the client is able to make her needs known even if it is a difficult task.

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 24 points during the PAS completion of March 16, 2005, which falls within the Level of care C. The deterioration of the claimant's condition, since the March PAS completion, cannot be addressed in this decision. I am ruling to **uphold** 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 20th Day of July 2005.

**Sharon K. Yoho
State Hearing Officer**