

# 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	
	August 22, 2006		
Dear Mr:			

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 4, 2006. 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 your 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 Home and Community-Based Services Waiver Policy and Procedures Manual 520 & 570.1)

Information submitted at your hearing revealed 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 "D" rating. As a result, you are eligible to receive five (5) hours per day or 155 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

**CCIL** 

West Virginia Advocates

BoSS WVMI

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

	Claimant,			
v.	Action Number: 06-BOR-1073			
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 August 22, 2006 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 August 4, 2006 on a timely appeal filed February 6, 2006. The hearing was originally scheduled for May 5, 2006, but was rescheduled at the request of the Claimant.			
	It should be noted here that the Claimant's benefits have not 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			

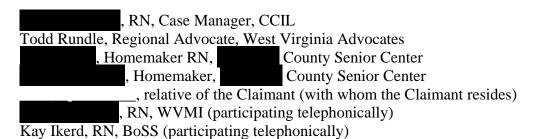
services as opposed to being institutionalized.

population is individuals who would otherwise be placed in an intermediate or skilled nursing

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

facility (if not for the waiver services). Services offered under the Waiver Program will

## III. PARTICIPANTS:



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 520, 570 and 580

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

# **Department's Exhibits:**

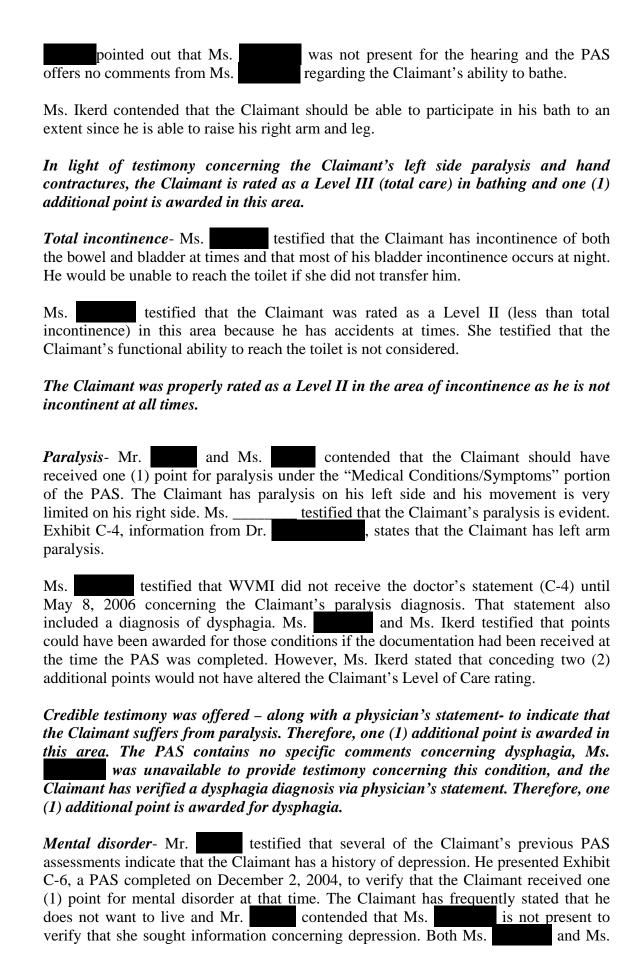
- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 520, 570 and 580
- D-2 Pre-Admission Screening (PAS) 2005 assessment completed on November 29, 2005
- D-3 Notice of Decision dated December 23, 2005

## **Claimant's Exhibits**

- C-1 Pre-Admission Screening (PAS) 2005 assessment completed on November 29, 2005
- C-2 Aged/Disabled Home and Community-Based Services Manual Section 570
- C-3 Service Coordination Plan
- C-4 Diagnoses from Dr.
- C-5 Notice of Decision dated December 23, 2005
- C-6 Pre-Admission Screening (PAS) 2000 assessment completed on December 2, 2004
- C-7 Aged/Disabled Home and Community-Based Services Manual Sections 520, 570 & 580
- C-8 Consent for release of information
- C-9 Notice of Decision dated December 23, 2005
- C-10 IG-BR-29

# VII. FINDINGS OF FACT:

1)	The Claimant's Aged/Disabled Waiver case, hereinafter ADW, was undergoing an annual reevaluation to verify continued medical eligibility.
2)	, RN, West Virginia Medical Institute, completed a medical assessment (D-2) on November 29, 2005 and determined that the Claimant continues to meet the medical eligibility criteria. Ms. , who represented WVMI since Ms. is no longer employed by the organization, testified that the Claimant was assigned 23 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a LOC "C" (23 points)- eligible for four (4) hours per day or 124 hours per month of homemaker services.
3)	The Claimant was sent notification on December 23, 2005 (D-3) advising him of the proposed reduction in hours.
4)	Witnesses for the Claimant contended that additional points should be awarded in the following areas:
	Total care in eating- Ms. , who has worked with the Claimant for the past five years, testified that the Claimant's ability to hold items has deteriorated. She testified that the Claimant can feed himself to a point with a spoon, but that she must clean up after him. Ms testified that she prepares and cuts the Claimant's food, and feeds him some foods such as soup. The Claimant holds a "sippy cup" with a straw at times, but often drops it. Ms testified that the Claimant's ability to eat declined following his stroke several years ago. He often refuses foods and/or beverages because he cannot hold them in his hand.
	Both Mr. and Ms. contended that the Claimant would be unable to receive proper nourishment without assistance.
	Ms. testified that the Claimant was rated as a Level II in eating, which indicates that he requires physical assistance. She testified that meal preparation is not considered.
	Based on testimony offered during the hearing, the Claimant has been properly rated as a Level II (physical assistance) in regard to his ability to eat and drink. No additional point is awarded in this area.
	Total care in bathing- Ms. testified that she sponge bathes the Claimant from head to toe in his bed. Ms. testified that the Claimant is unable to shift his weight so she must pull or shove him to turn him over during baths. The Claimant can raise his right arm and right leg, but cannot move his left side. Ms. testified that the Claimant was given a wash cloth to wash his face when he was hospitalized and he was unable to do so. Ms. testified that the Claimant cannot bathe himself because of contractures of the hands. Ms. contended that the Claimant receives bed baths and should be considered as requiring total care (Level III) in bathing. Mr.



Ms. Ikerd contended that medical conditions can change, and that there is no diagnosis of depression or information to indicate that the Claimant was prescribed medication for the condition. Mr. responded that many people who suffer from depression are

testified about the Claimant's depression as well.

One (1) additional point is awarded for mental disorder because reasonable testimony was offered to support the continued existence of this condition.

Mr. contended that the Claimant should have been awarded up to 12 points for each diagnosis he has under "Other- Medical Conditions/Symptoms." However, policy indicates that an individual may only receive one (1) point under the "Other- Medical Conditions/Symptoms" (23 L) PAS section regardless of the number of additional diagnoses.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 570.1.c and 570.1.d (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- 1 point for each (can have total of 12 points)
  - #24- 1 point

not treated.

- #25- 1 point for B, C or D
- #26- Level I- 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 are given for J (wheeling)

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

- #26 1 point for continuous oxygen
- #27 1 point for "No" answer- medication administration
- #33- 1 point for Alzheimer's or other dementia
- #34- 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. The Claimant was awarded 23 points on a November 29, 2005 PAS and assigned a Level of Care "C" (23 points) in conjunction with his annual medical reevaluation.

2. As a result of information presented during the hearing, four (4) additional points are awarded to the Claimant, bringing the Claimant's total number of points to 27. This renders the Claimant eligible for a Level of Care "D" which is equivalent to five (5) hours per day or 155 hours per month of homemaker service hours.		
DECISION:		
It is the decision of the State Hearing Officer to <b>reverse</b> the Agency's proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled, Title XIX (HCB) Waiver Program.		
RIGHT OF APPEAL:		
See Attachment		
ATTACHMENTS:		
The Claimant's Recourse to Hearing Decision		
Form IG-BR-29		
ENTERED this 22nd Day of August, 2006.		
Pamela L. Hinzman State Hearing Officer		

IX.

X.

XI.