



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

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

July 10, 2007

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 28, 2007. 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 (ADW) 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 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 503.2)

Information submitted at your hearing reveals that your condition at the time of your Pre Admission Screening qualifies for the degree of care and services offered under the Level C of Care under the ADW program.

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 from Level C to Level B.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review  
BoSS  
WVMI  
PHSS

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

\_\_\_\_\_,  
**Claimant,**

**v.**

**Action Number: 07-BOR-1115**

**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 June 28, 2007 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 28, 2007 on a timely appeal filed April 5, 2007.

It should be noted that the Claimant's benefits have 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

\_\_\_\_\_, Claimant's Husband

\_\_\_\_\_, Case Manager, Potomac Highlands Support Services, PHSS

\_\_\_\_\_, Director, \_\_\_\_\_ County Committee on Aging

#### **Department's Witnesses:**

Brian Holstein, Bureau of Senior Services, BoSS, by speakerphone

\_\_\_\_\_, RN, WVMI, 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 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 503.2, 503.2.1 and 503.2.2

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

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

D-1 Aged/Disabled Home and Community-Based Services Manual Sections 503.2, 503.2.1, 503.2.2

D-2 Pre-Admission Screening (PAS) assessment completed on March 14, 2007

D-3 Eligibility Determination dated March 14, 2007

D-4 Notice of reduction in benefits dated March 27, 2007

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

C-1 Letter from Dr. \_\_\_\_\_, MD dated April 25, 2007

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

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter ADW, was undergoing an annual reevaluation to verify continued medical eligibility in March 2007.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on March 14, 2007 and determined that the Claimant continues to meet the

medical eligibility criteria. The WVMI nurse assigned 16 points in her evaluation of the level of care the claimant requires.

- 3) Four points were assigned for Medical Conditions and Symptoms. One point was assessed for vacating in the event of an emergency. Ten points were assessed in the area of functional abilities in the home. One point was assessed for medication administration.
- 4) Witnesses for the Claimant raised issues in the following areas:

**Dyspnea**, which is under Medical Conditions/Symptoms: The evaluating nurse notes that this condition was denied during the assessment and there was no diagnosis of Dyspnea offered. Letter from the Claimant's doctor, Exhibit C-1, notes that the Claimant was being treated for Dyspnea on and before the date of the assessment. The Claimant testified that she does become short of breath during times when not properly hydrated and is rising from lying to sitting quickly and when eating.

**Significant Arthritis**, which is under Medical Conditions/Symptoms: The nurse noted during the evaluation this condition was denied and there was no available diagnosis. The Claimant testified that her doctor has told her that the pain she experiences in her neck is from Arthritis. Her Case Manager testified that her record held by them notes that the Claimant had previously been prescribed Celebrex but she had chosen to discontinue the use of this medication. Exhibit C-1 from her physician notes a diagnosis of Significant Arthritis.

**Dysphagia**, which is under Medical Conditions/Symptoms: The claimant testified that she does not have a chronic problem with swallowing, but she will have times when she has the problem several times in one day. The Case Manager notes that the claimant's file includes complaints with swallowing. There have been no swallowing studies completed on the claimant however; her physician in Exhibit C-1 notes Dysphagia as a diagnosis.

**Contractures**, which is under Medical Conditions/Symptoms: The claimant states that she cannot raise her feet up past a 90 degree angle and feels that this represents minor contractures in her ankles. She testified that she is referring to a condition known as Foot Drops. The WVMI nurse testified that Foot Drops are not considered contractures and that the Claimant does not have a frozen or locked joint which would be indicative of contractures. Exhibit C-1 notes a diagnosis of contractures. Testimony did not support this diagnosis.

**Bladder Incontinence**, which is under Functional Levels: The Claimant has leakage around her catheter one to two times per month. The evaluating nurse assessed 1 point for the leakage occurrences.

Exhibit C-1, letter from the Claimant's physician notes that the patient was being treated for the above-mentioned diagnosis on and before March 14, 2007. The PAS was completed on March 14, 2007.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2.1

and 503.2.2 (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) (must be based on medical evidence presented by appropriate medical professionals)
- #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 the individual obtains on the PAS assessment tool.
- 2) The Claimant received 16 points on a PAS completed by WVMi in March 2007 in conjunction with an annual reevaluation. For the previous level of care, "C" the claimant would require at least 18 points.
- 3) Evidence and testimony presented during the hearing, did support the need for additional points to be awarded to the Claimant under Medical Conditions/Symptoms. Testimony and observation of the Claimant supports the Diagnoses offered in Exhibit C-1 of Dyspnea, Arthritis and Dysphagia. Testimony did not support a diagnosis of contractures. Evidence and testimony supported the nurse's assessment of one point for Bladder incontinence.
- 4) Three additional points assessed for Dyspnea, Arthritis and Dysphagia increases total points to 19 which is indicative of a Level of Care C and renders the Claimant eligible for his previously determined (124) hours per month of homemaker services.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to reduce the Claimant's 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 10th Day of July 2007.**

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**Sharon K. Yoho**  
**State Hearing Officer**