



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 12, 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  
Central WV Aging Services

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

\_\_\_\_\_,

**Claimant,**

**v.**

**Action Number: 07-BOR-1254**

**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 30, 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:

[REDACTED], Claimant  
[REDACTED], Case Manager, Central WV Aging Services  
[REDACTED] Homemaker RN, Central WV Aging Services  
[REDACTED] Homemaker, Central WV Aging Services

Department's Witnesses:

Libby Boggess, Bureau of Senior Services, BoSS, by speakerphone  
[REDACTED] RN, WVMI, by speakerphone

Observing: Pam Pushkin, B.M.S.

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, 503.2.2 and Attachment 14.

### **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 April 3, 2007
- D-3 Eligibility Determination dated April 3, 2007
- D-4 Notice of reduction in benefits dated April 16, 2007

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

- C-1 Letter from Dr. [REDACTED] dated June 8, 2007

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

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter ADW, was undergoing an annual reevaluation in April 2007 to verify continued medical eligibility.

- 2) A West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on April 3, 2007 and determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse assigned 15 points in her evaluation of the level of care the claimant requires.
- 3) Two points were assigned for Medical Conditions and Symptoms. One point was assessed for vacating in the event of an emergency. Eleven 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: Exhibit C-1 notes that the claimant has this condition, which is due to her multiple sclerosis. The Department's representative accepted this diagnosis and advised that they would concede on this issue.

**Dysphagia**, which is under Medical Conditions/Symptoms: The claimant's Doctor in Exhibit C-1 reports this condition exists also due to her Multiple Sclerosis. The Department also accepted this diagnosis and conceded on this issue as well.

**Bowel Incontinence**, which is under Functional Levels: The Claimant advised the evaluating nurse that she has accidents with her bowels two times per month and the nurse assessed one point for occasional incontinence. The Claimant's pride was reported to have interfered with her accurate reporting of incidences to the evaluating nurse. In Exhibit C-1 the Claimant's doctor states, "\_\_\_\_\_ is totally incontinent of bowel. She uses Depends constantly, and is unable to void in a commode as she either fails to sense the urgency to void, or because she is unable to move to the commode in time, again due to her Multiple Sclerosis." The Claimant uses laxatives for her bowel movements. She waits 7 to 8 days between laxatives and when her bowels begin to move, she has no control of them. She will have 3 or 4 episodes of incontinence during the day in which the laxatives take affect. This will be followed with 7 to 8 days of no bowel movement and then the process is repeated. The Claimant reports that there may be one or two times during a month that she will make it to the toilet for a bowel movement. The Homemaker reports that she has to clean up bowel at least once per week. The Department's representative was not inclined to accept the Doctor's statement of total incontinence of bowel since is not a medical diagnosis but rather a condition.

- 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

- 6) Aged/Disabled Home and Community-Based Services Waiver Policy Manual, Attachment 14:

e.\_ Cont./Bladder – Occas. Incontinent\* Level 2, \*less than 3 per wk.

f.\_ Cont./Bowel - Occas. Incontinent\* Level 2, \*less than 3 per wk.

#### **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 15 points on a PAS completed by WVMI in April 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 2 additional points to be awarded to the Claimant under Medical Conditions/Symptoms. Diagnoses offered in Exhibit C-1 of Dyspnea and Dysphagia were accepted by the Department.
- 4) The Doctors claim of total incontinence of bowel was supported by testimony. Policy for occasional incontinence states, \*less than 3 per wk would be occasional and assigned only one point. The Department applies this same policy criteria to both bladder incontinence and bowel incontinence showing no differentiation between the normal frequencies of these two bodily functions. The policy does not stipulate that 3 per week means 3 per **EACH** (emphasis added) week. Testimony indicates that this Claimant has approximately 12 to 16 episodes of bowel incontinence in a month, which would be equivalent to 3 or more per week. She makes it to the toilet for one or two bowel movements during a month. This level of incontinence clearly would constitute more than occasional incontinence of bowel and therefore; the Claimant should be assigned 2 points for being Incontinent of bowel.

**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 12th Day of July 2007.**

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