



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
PO Box 6165  
Wheeling, WV 26003

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

November 19, 2007

Dear Mr. [REDACTED]:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 26, 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 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 503.2, 503.2.1 and 503.2.2)

Information submitted at your hearing revealed that the evaluating nurse properly assigned you 14 points for your documented medical conditions. Based on 14 points your Level of Care should be a Level "B" rating. As a result, you are eligible to receive three (3) hours per day or 93 hours per month of homemaker services.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to decrease your Level of Care under the Aged/Disabled Waiver Program.

Sincerely,

Melissa Hastings  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
WVMI  
BOSS  
[REDACTED]

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

██████████  
**Claimant,**

**v.**

**Action Number: 07-BOR-1558**

**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 October 26, 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 October 26, 2007 on a timely appeal filed July 27, 2007.

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

██████████ – Homemaker ██████████

██████████ – Case Manager ██████████

██████████, RN – RN Supervisor ██████████

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

Kay Ikerd, RN - Bureau of Senior Services by telephone

██████████, RN – WVMi by telephone

Presiding at the hearing was Melissa Hastings, 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 Section 500, 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 and 503.2.2

D-2 Pre-Admission Screening (PAS) assessment completed on May 23, 2007

D-3 Notice of Decision dated May 29, 2007

D-4 Medical Necessity Evaluation Request signed by Dr. ██████████ April 19, 2007

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

None

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

- 1) Claimant is a 60-year-old male. His Aged/Disabled Waiver program eligibility was undergoing an annual review on May 23, 2007.

- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (D-2) on May 23, 2007 with claimant, claimant's homemaker, supervising RN and case manager participating. The evaluating nurse determined that the claimant continues to meet the medical eligibility criteria for the AD/W program.
- 3) The Claimant was assigned 14 points by the evaluating nurse for documented medical conditions that require nursing services. A level of care (LOC) "B" (10-17 points) was assigned to claimant making him eligible for three (3) hours per day or 93 hours per month of homemaker services. It should be noted that the Claimant previously qualified as a LOC "C" (18-25 points) - eligible for four (4) hours per day or 124 hours per month of homemaker services.
- 4) The Claimant was sent notification on May 29, 2007 (D-3) advising him of the proposed reduction in hours.
- 5) Testimony and evidence received during the hearing reveal that the evaluating nurse from West Virginia Medical Institute, Inc. properly evaluated and awarded points to the Claimant based on regulations for the Aged/Disabled Waiver program.
- 6) Claimant and his representatives dispute the following findings on the PAS:
  - Eating
  - Bathing
  - Dressing
  - Medical Conditions – Angina
  - Bowel Incontinence
- 7) Eating – Testimony received from the claimant and his representatives indicate he does not have the dexterity in his hands to be able to grasp eating utensils. Claimant can eat finger foods but cannot eat items that require the use of a spoon, knife or fork. Could not eat soup for example. Must have meats cut up for him and then he can pick each piece up to eat. Evaluating nurse notes on the PAS, claimant told her he could feed himself but needed food cut up for him. Her testimony during the hearing indicates that while she did not see him eat during her evaluation, she did see him handle a cigarette lighter and smoke cigarettes during her review. A level 2 was assigned to this area indicating physical assistance needed to complete this task. A level 3 assignment would indicate total care is needed to complete this task. Evidence is clear that claimant does need physical assistance but does not require total care for feeding.
- 8) Bathing – Testimony received from the claimant and his representatives indicates he does not participate in assisting in his bathing at all. The evaluating nurse notes on the PAS that claimant has a daily bed bath as he is unable to be transferred into a tub or shower. Also indicates claimant told her that he can wash his face. The nurse notes that claimant has good range of motion of right arm as well as good grasp. Her noted opinion on the PAS was that claimant could participate more in his bathing but was not. A level 2 was assigned to this area indicating physical assistance needed to complete this task. A level 3 assignment would indicate total care is needed to complete this task. Evidence is clear that claimant does have the ability to move his right arm and hand as he smokes and can operate an electric wheelchair utilizing this hand. As a result he can participate in his

bathing utilizing this hand and would not need total care.

- 9) Dressing – Testimony received from the claimant and his representatives as well as a demonstration by the claimant indicates he does participate in dressing. He does have the ability to raise his right arm and move his neck and arm to assist the caregiver in getting his shirt on. A level 2 was assigned to this area indicating physical assistance needed to complete this task. A level 3 assignment would indicate total care is needed to complete this task. Evidence is clear that claimant does have the ability to assist the caregiver in accomplishing the task of dressing.
- 10) Medical Conditions (Angina) – Testimony received from the claimant indicates he has been diagnosed with the medical condition Angina and has a prescription for nitroglycerin. Neither the supervising RN nor the case manager from [REDACTED] were aware of this prescription. The claimant did advise the evaluating nurse during the review that he suffered from angina but failed to mention this prescription. Evaluating nurse notes that she attempted to contact Dr. [REDACTED] office to verify the condition several times but was unsuccessful. The Medical Necessity Evaluation Request completed by Dr. [REDACTED] on April 19, 2007 (D-4) does not note this condition. Claimant's testimony indicates that he uses the nitroglycerin two to three times per month. While it appears that claimant has this medical condition, without evidence of the prescription or a statement from the physician noting the condition a point cannot be awarded.
- 11) Bowel Incontinence – This area of functioning was raised by the claimant's representatives during this hearing. The evaluating nurse's evaluation of the claimant's condition was that he was incontinent and an assignment of a level 3 was given. Testimony received from the agency's representative indicates that the highest level of care in this area is a level 4. To receive this level of care an individual must have a colostomy. Evidence and testimony are clear that claimant does not have a colostomy. The assignment of a level 3 in this area is accurate.
- 12) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2, 503.2.1 and 503.2.2 (D-1): There are four levels of care for homemaker services. Points will be determined as follows, based on the following sections of the PAS:
  - #23- Medical Conditions/Symptoms -1 point for each (can have total of 12 points)
  - #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 III 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
  - #35- Prognosis - 1 point if terminal

The total number of points possible 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.
- 2) The Claimant received 14 points based on a properly completed PAS done by a WVMI nurse in May 2007 in conjunction with an annual reevaluation.
- 3) Policy indicates that an evaluation resulting in an award of 14 points on a properly completed PAS will result in an individual being assigned a level of care of 93 hours per month.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** 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 19th Day of November, 2007.**

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**Melissa Hastings  
State Hearing Officer**