



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Ave.
Lewisburg, WV 24901**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

September 5, 2007



Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 30, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to decrease homemaker hours under the Aged Disabled Waiver, ADW, 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 ADW 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 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 after review of the current PAS-2000, you meet the criteria for level of care C which equates to 124 service hours per month.

It is the decision of the State Hearing Officer to uphold the proposed action of the Department to decrease homemaker hours to a level C under the ADW Program.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
[REDACTED]
Kay Ikerd, BoSS
[REDACTED], WVMI

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


Claimant,

v.

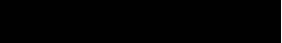
Action Number: 07-BOR-1559

**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 30, 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 August 30, 2007 on a timely appeal, filed June 6, 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:

[REDACTED] Claimant (By Telephone)
[REDACTED], Case Manager, [REDACTED] (By Telephone)
Kay Ikerd, RN, BoSS (By Telephone)
[REDACTED], RN, WVMi (By Telephone)

Presiding at the hearing was Margaret M. Mann, 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 Department 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 §503, §503.1.1, §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 §503.2., §503.2.1 and §503.2.2
- D-2 Pre-Admission Screening, PAS-2000, completed May 17, 2007
- D-3 Notice of Decision dated May 30, 2007

Claimant's Exhibits:

- C-1 Prescription from Dr. [REDACTED] dated 07/31/2007

VII. FINDINGS OF FACT:

- 1) The Claimant's birth date is listed as 06/11/1961. She is an active participant in the ADW Program and her eligibility was undergoing a re-evaluation on May 17, 2007. Her level of care had been previously assessed as a level 'D'.
- 2) A WV Medical Institute nurse, SS, completed a Pre-Admission Screening (PAS-2000) on May 17, 2007 in the Claimant's home with the Claimant and her case manager present. This PAS evaluation determined that the Claimant remained eligible for the Aged/Disabled Waiver program; however, it was determined that the level of care that she required had decreased from level D to a level C with twenty three (23) points awarded. (Exhibits D-2 & D-3)

- 3) The Claimant's diagnoses listed on the referral form were HTN, history stroke, asthma, diabetes, arthritis, pulmonary disease, peripheral vascular disease, legally blind, severe allergies, bowel and bladder incontinence, and contractures to toes. The Claimant added dropped foot, cholesterol, and bronchitis. (Exhibit D-2)
- 4) The May 17, 2007 PAS (Exhibit D-2) assigned this Claimant with twenty three (23) points in determining the level of care required. The evaluating nurse assigned eight (8) points in the areas of Medical Conditions/Symptoms (c – dyspnea, d – significant arthritis, f – dysphagia, h - pain, i – diabetes, j – contractures, k – mental disorder, and l (other) – HTN; and fourteen (14) points in the area of functional levels. The Claimant was assessed as being physically unable to vacate in the event of an emergency (1 point). The Claimant was initially assessed as being able to administer her own medication. Testimony at the hearing revealed that the Claimant is blind. Her pharmacist pre-packages her medication in daily doses. The WVMi nurse conceded that this would equate to needs supervision to administer medication and this would add one (1) additional point. The point total was twenty four (24) which was Level of Care C. This equates to 124 homemaker hours per month.
- 5) The issues contested in the hearing were in the following areas: No points given under #23 for angina with rest/exertion, hearing, transferring and walking.
- 6) The PAS reads under Angina with Rest/Exertion: Reports chest pain due to acid reflux, heart and breathing problems. Does not have ntg at this time. Case manager reported she would follow-up on this and report any changes from MD. Spoke with case manager on 05/23/2007 no further information received by MD regarding angina diagnosis. (Exhibit D-2) The case manager agreed with this statement. A prescription was issued for nitroquick, the generic name is nitroglycerin, 07/31/2007. (Exhibit C-1)
- 7) Testimony from the Claimant revealed that she has had a series of surgeries in April, May, June, July and goes again September 6. The case manager clarified that this surgery has been going on since December, basically every other month. She is having lymph nodes removed from her neck with laser surgery. She is in the process of moving in order to accommodate a wheelchair. Someone has to help her out of bed to the wheelchair. She is lifted into the lift chair. The same procedure is used in the bathroom. She cannot get her left arm up. She also has trouble hearing.
- 8) The nurse's notes on the PAS-2000 (Exhibit D-2) read in part: Strong grips bilateral. Client unable to lift left arm over her head. Equipment in the home includes lift chair, shower chair, crutches, walking sticks, walker. Transferring: Observed client use lift chair to raise her and then stood with use of pole cane for balance. Walking: Observed ambulate with use of pole cane. Slow and cautious gate. Wheeling: Reports has times when she needs the use of a wheelchair but does not have room in her home for it. Says a walker gets hung up, uses walking stick. Hearing: Good. Questions did not require repeating during assessment. The Claimant was assessed as needing supervised/assistive device for transferring and walking, no wheelchair, and hearing not impaired. The WVMi nurse testified that the Claimant did not need assistance to transfer and walk during the assessment. She did not note any problems with the Claimant's hearing. The Claimant's ongoing surgeries would not have changed her original assessment as the assessment is based on the Claimant's abilities on the day

of the assessment.

- 9) The Claimant testified she can lift her left arm to ear level. The Department's position is that this limited range of motion is not paralysis. Paralysis means that the arm cannot move at all.
- 10) Aged/Disabled Home and Community-Based Services Manual Section 503 – Member Eligibility and Enrollment Process:

Applicants for the ADW Program must meet the following criteria to be eligible for the Program:

C. Be approved as medically eligible for NF Level of Care.

- 11) Aged/Disabled Home and Community-Based Services Manual Section 503.1.1 –

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.

- 12) Aged/Disabled Home and Community-Based Services Manual Section 503.2 – 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. Decubitus - Stage 3 or 4 (Item 24 on PAS 2000)
- B. Unable to vacate a building- In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. A) independently and b) With Supervision are not considered deficits. (Item#25 on PAS-2000)
- C. Functional abilities of individual in the home. (Item 25 on the PAS 2000).
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 of (e) bowel and/or (f) bladder)
Orientation--	Level 3 or higher (totally disoriented, comatose)
Transfer-----	Level 3 or higher (one person or two person assistance in the home)
Walking-----	Level 3 or higher (one person assistance 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. 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. (Item 27 on the PAS 2000)

E. The individual is not capable of administering his/her own medications. (#28 on the PAS-2000)

13) Aged/Disabled Home and Community Based Service Manual # 503.2.1 & 503.2.2.:

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 2005:

- #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 1 point Decubitus
- #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 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 for Alzheimer's or other dementia
- #35 Prognosis – 1 point if Terminal

Levels of Care Service Limits:

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. 18 to 25 points indicates a level C which is for 124 hours per month in homemaker services. The evaluating nurse assigned 24 points, which falls within the Level C of care.
- 2) No additional points are awarded for hearing, transferring and walking as there was no clear evidence or testimony given that would change the Department's determination at the time of the assessment.
- 3) No additional points are awarded under #23 for angina rest/exertion. The policy requires that the decision must be based on medical evidence presented by appropriate medical professionals. The testimony at the hearing revealed that at the time of the assessment, 05/17/2007, the Claimant was not taking medication for angina. The prescription was not issued until 07/31/2007.
- 4) There is a total of twenty four (24) points assigned to the Claimant. Twenty four (24) points is level of care C which equates to 124 service hours per month.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, it is the finding of the State Hearing Officer that the Department has correctly determined the Claimant's level of care according to the information found on the PAS-2000 form dated May 17, 2007. The Department is upheld in the decision to reduce the number of service hours to 124 under the Aged/Disabled Home and Community-Based Services Waiver Program. The action described in the notification letter dated May 30, 2007 will be taken.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 5th Day of September, 2007.

**Margaret M. Mann
State Hearing Officer**