



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

November 20, 2007

Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 7, 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. These regulations specify that each applicant/member determined to be medically eligible for ADW services receives an appropriate level of care that reflects current/actual medical condition and service needs. There are four levels of care for homemaker services. The QIO RN will record observations and findings regarding the applicant's level of function in the home. Points will be determined, based on sections 23 thru 28, 34 and 35 of the PAS. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual §503.1 and 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  
Kay Ikerd, BoSS  
[REDACTED], WVMI  
[REDACTED]

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

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**Claimant,**

**v.**

**Action Number: 07-BOR-1589**

**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 November 7, 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 November 7, 2007 on a timely appeal filed June 11, 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] Claimant's Stepfather

[REDACTED], Homemaker, [REDACTED]

[REDACTED], Case Manager, [REDACTED]

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services, BoSS, by speakerphone

[REDACTED], 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 May 21, 2007

D-3 Eligibility Determination dated May 21, 2007

D-4 Notice of reduction in benefits dated May 31, 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 May 2007.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a Pre-Admission Screening (PAS) assessment (D-2) on May 21, 2007. The nurse noted that persons present during the assessment were the claimant and her homemaker. The evaluation determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse assigned 17 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. Eleven points were assessed in the area of functional abilities in the home and one point for medication administration.
- 4) The claimant has primary diagnosis of Limb Girdle Muscular Dystrophy and Cardiomyopathy. She is confined to a wheelchair. Witnesses for the Claimant raised issues in the areas of arthritis, contractures and paralysis, which are all under Medical Conditions and Symptoms.
- 5) The claimant told the evaluating nurse that she believes she has arthritis in her hips but has no diagnosis from her doctor. She has five fractures in her back and one in her neck. The claimant has been diagnosed with Osteoporosis and she voiced her belief that arthritis is associated with Osteoporosis. The WVM nurse relates that the two diseases are not associated with each other.
- 6) The claimant's legs are permanently bent in her wheelchair sitting position. She cannot straighten her legs. Others can move her legs up and down and from side to side, but the knee joint stays in the bent position. The claimant testified that she was probably not fully aware of what the nurse meant by contractures. The claimant testified that the nurse did not ask her if she could bend her legs. The nurse's notes indicate that the claimant denied contractures.
- 7) The claimant's witnesses testified of their belief that Muscular Dystrophy has caused paralysis. There was testimony of the claimant's inability to move lower parts of her body. There was no testimony given regarding loss of feeling or sensation in her lower body.
- 8) 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 17 points on a PAS completed by WVMi in May 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 that the Claimant had contractures in her legs at the time of the PAS. Contracture is the condition of a frozen joint. This claimant's knee joints are fixed in one position. The testimony, given by the claimant regarding her lack of understanding of the term contractures, was convincing. The nurse should have assessed one point for contractures.
- 4) It could not be concluded that the claimant has significant arthritis or paralysis.
- 5) The Department should have assessed 18 points in May during the assessment. 18 points is indicative of a Level of Care "C" and renders the Claimant eligible for (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 20th Day of November 2007.**

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**Sharon K. Yoho  
State Hearing Officer**