



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

██████ for ██████

██████

Dear Ms. ██████

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 23, 2007. Your hearing request was based on the Department of Health and Human Resources' assigned 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 are 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 your sister 16 points for her documented medical conditions. Based on 16 points her Level of Care should be a Level "B" rating. As a result, she is 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 Department's determination of your sister's 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

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

██████████  
**Claimant,**

**v.**

**Action Number: 07-BOR-1750**

**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 23, 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 23, 2007 on a timely appeal filed August 16, 2007.

**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's Guardian and Sister

Department's Witnesses

Kay Ikerd, RN - Bureau of Senior Services

██████████, RN – WVMI

Alva Page, Attorney – Attorney General's Office (observing)

Presiding at the hearing was Melissa Hastings, State Hearing Officer and a member of the State Board of Review.

All parties participated telephonically.

**IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided is whether the Agency was correct in its assignment of 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 June 20, 2007
- D-3 Notice of Decision dated July 02, 2007

**Claimant's Exhibits**

- C-1 Forensic psychiatry Evaluation dated July 21, 2005
- C-2 Letter written by Claimant dated Feb. 23, 1999

**VII. FINDINGS OF FACT:**

- 1) Claimant is a 46 year old female. Her Aged/Disabled Waiver program eligibility was determined and a level of care assigned on June 20, 2007.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (**D-2**) on June 20, 2007 with claimant, claimant's sister, case manager from ██████████ and an advocate from ██████████ participating. The evaluating nurse determined the claimant met the medical eligibility criteria for the AD/W program.
- 3) The Claimant was assigned 16 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 her eligible for three (3) hours per day or 93 hours per month of homemaker services.

- 4) The Claimant was sent notification on July 2, 2007 **(D-3)** advising her of the approval of her application for Aged/Disabled Waiver Program services and the assignment of 93 hours per month of homemaker services.
- 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's representative disputes the assignment of a level 2 in the functional areas of eating, bathing, dressing, grooming and orientation. In addition, Claimant's representative disputes the assignment of a level 1 for hearing and vision.
- 7) Claimant has been diagnosed with schizoaffective disorder. As a result of this disorder her functional abilities are affected by her mental state rather than her physical state.
- 8) Eating – The evaluating nurse determined Claimant needed her food cut up for her but did not need physical help to eat. Needed lots of redirecting and prompts. Claimant's representative's testimony indicates Claimant must be constantly monitored, prompted and guided to eat. The assignment of a level 2 physical assistance/prompting rather than a level 3 total care is proper.
- 9) Bathing – The evaluating nurse determined Claimant needed help in bathing in the form of redirecting and verbal cues. She is physically capable of doing her own bath but due to mental disorder refuses to participate. Claimant's representative's testimony indicates Claimant does not participate at all in the bathing process. The assignment of a level 2 physical assistance/prompting rather than level 3 total care is proper because Claimant is physically capable of assisting with her bathing but refuses to do so.
- 10) Dressing – The evaluating nurse determined Claimant needed help in dressing. Does have difficulty at times in getting her arms and legs in her clothes, cannot get her own socks and shoes on and needs assistance in putting on underclothes. Claimant's representative's testimony indicates Claimant would wear only a towel or was nude when living on her own. Must be prompted and assisted to be able to dress. The assignment of a level 2 physical assistance/prompting rather than a level 3 total care is proper.
- 11) Grooming – The evaluating nurse determined Claimant was unable to wash her own hair, needed assistance with trimming fingernails and could not do her own toenails, must be prompted to brush her own hair. Claimant's representative's testimony indicates Claimant's hair was a solid mass from lack of washing when she lived on her own, fingernails and toenails were long and dirty. The assignment of a level 2 physical assistance/prompting rather than a level 3 total care is proper.
- 12) Orientation – The evaluating nurse determined Claimant was fixed on time by reading newspapers. Also knew where she was but does have episodes of confusion. Is capable

of following instructions. Claimant's representative's testimony indicates Claimant is totally disoriented to person, place and time at all times. The assignment of a level 2 Intermittent Disoriented rather than level 3 Totally Disoriented is proper.

- 13) Vision and Hearing – The evaluating nurse determined Claimant did not wear glasses and read the newspaper each day. Also states Claimant denied any problems with hearing. Claimant's representative's testimony indicates Claimant has auditory and visual hallucinations which impair her vision and hearing abilities. The assignment of a Level 1 not impaired for the physical capabilities of the Claimant rather than level 3 impaired not correctable in these two areas is proper.
- 14) 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 16 points based on a properly completed PAS done by a WVMi nurse in June 2007 in conjunction with an evaluation for program eligibility.

- 3) Policy indicates that an evaluation resulting in an award of 16 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 to assign the Claimant 93 homemaker service hours per month 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**