



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 5, 2007

Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 1, 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 for the Aged/Disabled Waiver (ADW) Program, each applicant/member determined to be medically eligible for ADW services receives an appropriate LOC that reflects current/actual medical condition and short- and long- term 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 D 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 D to Level C.

Sincerely,

Sharon K. Yoho  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
BoSS  
WVMI

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

██████████  
**Claimant,**

**v.**

**Action Number: 07-BOR-1962**

**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 1, 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 1, 2007 on a timely appeal filed August 21, 2007.

It should be noted that the Claimant's benefits have continued pending a hearing decision.

Let the record show that the evaluating nurse was not made available for this hearing and the claimant's daughter agreed to proceed with the hearing without this witness. This claimant had recently been dropped by her Case Management Agency due to a program change and then picked up by another Case Management Agency. This CMA did not provide a representative for this hearing.

**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 daughter

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services, BoSS, 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 July 31, 2007
- D-3 Eligibility Determination dated July 31, 2007
- D-4 Notice of reduction in benefits dated August 10, 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 July 2007.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a Pre-Admission Screening (PAS) assessment (D-2) on July 31, 2007. The nurse noted that persons present during the assessment were the claimant's daughter. The evaluation determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse assigned 25 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. Eighteen points were assessed in the area of functional abilities in the home, one point for medication administration and one point for Dementia / Alzheimer's related condition.
- 4) The witness for the Claimant raised issues in the area of contractures, which is under Medical Conditions and Symptoms. Issues were also raised in the area of bowel incontinence and in orientation, which are under functional abilities in the home.
- 5) The evaluating nurse noted on the PAS that a condition of frozen/locked joints was denied and that there was no diagnosis noted. The nurse did note in the category of paralysis that the daughter reported that her mother has very limited range of motion in her right arm. The daughter testified that the fingers on her mother's right hand are curled into her palm and that she can only move one of the fingers. The daughter can only lift the fingers less than a quarter of an inch from the palm in order to clean under them. She often uses a hair dryer to dry the hand because she cannot get it completely dry with a cloth. She notices fingernail marks on the palm and she has to clip the fingernails often to avoid this.
- 6) The daughter testified that she might not have been totally honest with the evaluating nurse regarding bowel incontinence. The nurse noted that once in a while the claimant has a bowel movement on the toilet. She noted that she goes 2 X a week, just has a smear or does a little bit in her depends. She also recorded that she has less control than more, but relates she has control over them sometimes. The nurse rated her bowel condition at a level 2 for occasional incontinent. The daughter testified that at the time of the PAS she was cleaning up bowel 3 or for times per week and sometimes more than one time per day.
- 7) Orientation was an issue addressed by the claimant's daughter. She states that it is hard sometimes to determine her mother's orientation because she cannot speak. She did tell the nurse that she believed her mom might be able to keep track of time and day by using the television. She told the nurse that there seemed to be no problem with her orientation to person, place and time. The daughter testified that now sometimes her mother will just stare at someone and she will respond with a laugh when told that a family member has passed away.
- 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

#### 9) Aged/Disabled Waiver Policy Manual, Attachment 14

- f. Cont./Bowel                      Level (1-Continent) (2-Occas. Incontinent) (3-Incontinent)  
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 25 points on a PAS completed by WVMi in July 2007 in conjunction with an annual reevaluation. For the previous level of care, "D" the claimant would require at least 26 points.
- 3) Information given to the evaluating nurse at the time of the PAS did not indicate any problems with orientation as of July when the PAS was completed. The nurse correctly assessed no points in this area.
- 4) Evidence and testimony presented during the hearing, did support that the Claimant had contractures at the time of the PAS. Evidence shows that the nurse was advised of the limited range of motion of the claimant's right arm. It is not clear whether the evaluating nurse observed the claimant. She notes that only the daughter was present during the assessment. She however notes under hearing, that she did not have to speak in a louder tone to member. The lack of any notes made regarding the condition of the claimant's hand indicates that the nurse did not observe the right arm after the daughter explained the inability to move it. The testimony given by the daughter regarding the task of cleaning the right hand supports that the fingers are contracted into the palm and cannot be move back out.
- 5) Both the nurse's notes and the testimony given by the claimant's daughter support that this claimant is more than occasionally incontinent of bowel. Policy in Attachment 14 states that Level 2, which was assigned by the evaluating nurse means, Occas. Incontinent, less than 3 per week. Evidence and testimony support that this claimant rarely if ever has a bowel movement in the toilet.

- 6) The Department should have assessed 27 points in July, with the addition of a point for contracture and one additional point for bowel incontinence. 27 points is indicative of a Level of Care “D” and renders the Claimant eligible for (155) 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 5th Day of November 2007.**

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