



**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**

February 12, 2007

Dear Mr. [REDACTED]:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 1, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to decrease homemaker hours under the Aged Disabled Waiver, A/DW, 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 A/DW 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 A/DW Program.

Sincerely,

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

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

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

█  
**Claimant,**

**Action Number: 06-BOR-3286**

**v.**

**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 February 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 February 1, 2007 on a timely appeal, filed November 14, 2006.

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.

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

, RN, WVMI (By Telephone)

that the level of care that he required had decreased from level D to a level C with twenty-one (21) points awarded. (Exhibit D-3)

- 3) The Claimant's medical history shows diagnoses of Multiple Sclerosis, Cerebral Atrophy, Diabetes Mellitus, COPD, Urinary and Fecal Incontinence, Lumbar Disc Disease – Arthritis, Hypertension, Angina, and Dysphagia with Choking Features. (Exhibit C-1)
- 4) The October 3, 2006 PAS assigned this Claimant with 21 points in determining the level of care required. The evaluating nurse assigned seven (7) points in the areas of Medical Conditions/Symptoms (c – dyspnea, d – significant arthritis, f – dysphasia, h – pain, i – diabetes, k – mental disorder, and l – high blood pressure) and twelve (12) 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) and needing prompting/supervision with medication administration (1 point). The total points assigned were twenty-one (21) which equates to Level of Care C and 124 homemaker hours per month. (Exhibit D-2)
- 5) The issues contested in the hearing were in the areas of no diagnosis of angina, eating, bathing, dressing, grooming, transferring, and wheeling. A statement from the Claimant's physician dated 10/10/2006 (Exhibit C-1) revealed that the "patient was documented as being Total Care for feeding, bathing, dressing, grooming and incontinence."
- 6) Angina – Testimony from the WVMI nurse revealed that that the doctor's statement noted a diagnosis of angina. At the time of the assessment the Claimant denied angina and there was no diagnosis of angina on the referral form. She contacted the doctor's office and was told there was the "potential" for angina. There was no firm diagnosis, no medication was prescribed for the condition and no point was given for angina. The diagnosis of dysphasia was corrected.
- 7) Eating – The Claimant has tremors. A spoon has to be used at all times. The Claimant cannot use a spoon. When the Claimant attempts to eat a sandwich, he gets it all over the floor. The WVMI nurse did observe him drinking from a soda bottle independently on the day of the assessment. Testimony revealed total care means total care and this was not demonstrated at the time of the assessment. Total care means not being able to participate at all.
- 8) Bathing – Testimony revealed that some days the Claimant is able to wash his private areas and other days he cannot. He is able to extend his arms at times.
- 9) Dressing – Documentation on the PAS revealed that the Claimant was able to demonstrate that he could extend his arms & states he can do that when someone helps him with his shirt. He also demonstrated extending his legs as he would while someone assists him with his pants. Testimony from the homemaker revealed sometimes he can lift his leg but he is shaky and there is no way he can dress himself.
- 10) Grooming – The assessment revealed that just about the only part of grooming in which the Claimant participates is he rinses his mouth with mouthwash by having the

mouthwash placed in a special bottle he uses so he doesn't spill the mouthwash due to tremors. The Claimant disputes that he can comb his hair. A neighbor helps him shave.

- 11) Transferring – The Claimant demonstrated during the assessment that he can transfer from the couch to the power chair by holding on to the couch and power chair. He also demonstrated he could transfer from the power chair to his regular twin bed. Testimony revealed that he does transfer with great difficulty and he does fall from time to time. He does need assistance at times with transferring.
- 12) Wheeling – Testimony revealed that the Claimant uses a power chair in the home. The inside doors are kept propped open so he can get through the home. He uses the manual wheelchair outside of the home. If the doors are needed to be opened, that would be situational assistance.
- 13) 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.

- 14) 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.
- 15) 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)

16) 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 18 to 25 points to qualify as requiring a level C in care, which is 124 hours per month in homemaker services. 26 to 44 points indicates a level D which is for 155 hours per month in homemaker services. The evaluating nurse assigned 21 points, which falls within the Level C of care.
- 2) There was no medical evidence to support a finding of angina under #23 Medical Conditions/Symptoms.
- 3) The testimony and evidence at the hearing support the PAS finding that the Claimant does need physical assistance, not total care, with eating, bathing, dressing and grooming. Although quite limited, the Claimant does assist some with these activities and no additional points can be awarded.
- 4) The Claimant demonstrated the ability at the time of the assessment as being able to transfer from his couch to the power chair and from the power chair to his bed without assistance. He was also able to wheel independently through his home. No additional points can be awarded for transferring and wheeling.
- 5) There is a total of twenty-one (21) points assigned to the Claimant. Twenty-one (21) 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 October 3, 2006. 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 November 6, 2006 will be taken.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 12<sup>th</sup> Day of February, 2007.**

---

**Margaret M. Mann**  
**State Hearing Officer**