



**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 5, 2007

Dear Ms. [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 B which equates to 93 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 B 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],
Libby Boggess, BoSS
[REDACTED], WVMI

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

█
Claimant,

v.

Action Number: 06-BOR-3317

**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 13, 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.

III. PARTICIPANTS:

Claimant
Claimant's Part-Time Caregiver and Medical Power of Attorney
[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 October 25, 2006
- D-3 Notice of Decision dated November 13, 2006

Claimant's Exhibit:

- C-1 Patient Summary Report

VII. FINDINGS OF FACT:

- 1) The Claimant's birth date is listed as 05/13/1928. She is an active participant in the A/DW Program and her eligibility was undergoing a re-evaluation on October 25, 2006.
- 2) A WV Medical Institute nurse, SL, completed a Pre-Admission Screening (PAS-2000) on October 25, 2006 in the Claimant's home with the Claimant, her Caregiver/MPOA 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 C to a level B with 15 points awarded.

- 3) The Claimant's primary diagnoses listed on the referral form were Chronic COPD, O2 24/7, Anxiety, S/P Pacemaker, Depression, Cardiomegaly – HTN, Osteoporosis, Angina, and Gerd CHF.
- 4) The October 25, 2006 PAS assigned this Claimant with 15 points in determining the level of care required. The evaluating nurse assigned five (5) points in the areas of Medical Conditions/Symptoms (a – angina rest, b – angina exertion, c – dyspnea, k – mental disorder, and l – high blood pressure) and seven (7) points in the area of functional levels. It should be noted that the initial re-evaluation did not give credit for a – angina rest or b – angina exertion. However, the WVM nurse did make a correction and gave the Claimant credit for angina rest and angina exertion. The Claimant was assessed as being physically unable to vacate in the event of an emergency (1 point), assessed as needing continuous oxygen (1 point) and needing prompting/supervision with medication administration (1 point). The total points assigned were fifteen (15) which is Level of Care B. This equates to 93 homemaker hours per month.
- 5) The issues contested in the hearing were in the areas of vision, transferring, wheeling and medication administration.
- 6) Testimony on behalf of the Claimant revealed that the Claimant has to be supervised when taking her medication. The medication is placed in a pillbox or cup in order for the medication to be administered. She has double dosed on a couple of occasions since the assessment was done. She sometimes forgets to take her medicine. It was reported to the nurse at the time of assessment that the medicine is set up for the Claimant and she could open the container. The homemaker reported the Claimant does get confused but with prompting and supervision she does take her medication.
- 7) Testimony revealed that the Claimant has cataracts and her eyeglasses cannot be corrected. At the time of the assessment it was noted she has impaired vision and was wearing glasses. The Claimant signed the consent form and was able to see a calendar and watch television. She demonstrated the ability to see and she was assessed as impaired vision – correctable.
- 8) Under transferring and wheeling, testimony revealed that the Claimant uses her cane and wheelchair in the home. She uses her cane to get to her wheelchair. She wheels her wheelchair to the kitchen and to the bedroom. At the time of the assessment, it was noted she uses a cane in the home and there was also a walker. She does transfer from her chair to her wheelchair using a cane. The Claimant was observed doing this at the time of the assessment. She uses a power wheelchair independently in the home. The use of any hands-on assistance for transferring/wheeling in the home was denied. She was assessed as level 2 (supervised/assistive device) for transferring and level 2 (supervised/assistive device) for walking. The Claimant was assessed as wheeling independently.
- 9) 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.

10) 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.

11) 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)

12) 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 oxyg.
- #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. 10 to 17 points indicates a level B which is for 93 hours per month in homemaker services. The evaluating nurse assigned 15 points, which falls within the Level B of care.
- 2) No additional point is awarded under vision as it was demonstrated that the Claimant could see using eyeglasses at the time of the assessment.

- 3) No additional point is awarded for transferring as it was demonstrated that the claimant transfers in her home using an assistive device, her cane.
- 4) No additional point is awarded for wheeling as it was demonstrated that the Claimant uses her power wheelchair independently in the home.
- 5) It was demonstrated that the Claimant takes her medication with supervision/prompting. She was correctly assigned one point for medication administration.
- 6) There is a total of fifteen (15) points assigned to the Claimant. Fifteen (15) points is level of care B which equates to 93 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 25, 2006. The Department is upheld in the decision to reduce the number of service hours to 93 under the Aged/Disabled Home and Community-Based Services Waiver Program. The action described in the notification letter dated November 13, 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 5th Day of February, 2007.

**Margaret M. Mann
State Hearing Officer**