



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

March 3, 2007

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Mr. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 14, 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. One of these regulations specifies that for the Aged/Disabled Waiver (ADW) Program, the number of homemaker service hours is determined based on the 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 is reviewed and approved by WVMI. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual 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 **uphold** 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  
Catholic Community Services

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

\_\_\_\_\_,  
**Claimant,**

**v.**

**Action Number: 07-BOR-536**

**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 March 14, 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 March 14, 2007 on a timely appeal filed January 9, 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] Case Manager, Catholic Community Services  
[REDACTED], Homemaker RN  
[REDACTED] Owner, Select Home Services

#### **Department's Witnesses:**

Libby Boggess, Bureau of Senior Services, BoSS, by speakerphone  
[REDACTED], RN, 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 December 21, 2006
- D-3 Eligibility Determination dated December 21, 2006
- D-4 Notice of reduction in benefits dated January 3, 2007

#### **Claimant's Exhibits:**

- C-1 Letter from Dr. [REDACTED] dated March 2, 2007
- C-2 Letter from Dr. [REDACTED] dated February 28, 2007
- C-3 Letter from Speech/Language Pathologist dated March 2, 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 December 2006.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on December 21, 2006 and determined that the Claimant continues to meet the

medical eligibility criteria. The WVMi nurse assigned 22 points in her evaluation of the level of care the claimant requires.

- 3) Seven points were assigned for Medical Conditions and Symptoms. One point was assessed for vacating in the event of an emergency. Thirteen points were assessed in the area of functional abilities in the home. One point was assessed for medication administration.
- 4) Witnesses for the Claimant raised issues in the following areas:

**Arthritis**, which is under Medical Conditions/Symptoms: Exhibit C-1 confirms that the claimant has been diagnosed with arthritis since age 20. The evaluating nurse did not have this information available to her at the time of the assessment and no point was assessed. The claimant treats this condition with Darvacet and Ibuprophen.

**Wheeling**, which is under functional abilities: The Claimant was assessed at a level 1 during the evaluation indicating that no wheel chair is used in the home. The claimant does not have a permanent residence. He resides at a friend's house part of the time and at his cousin's house part of the time. He does not use his chair at his cousin's home because there is not room for his chair inside that home. He must be lifted up and moved by others when in his cousin's home. When he is residing at his friend's home, which is where the assessment took place, he does use his wheelchair. The claimant was in his chair during the assessment.

**Vision**, which is under functional abilities: The Claimant was assessed at a level 2 for vision, which indicates his vision is impaired but correctable. Exhibit C-2 indicates that he is legally blind in his right eye and his best-corrected vision in that eye is 20/200. He testified that he could see TV but not clearly. He states that he can read big print. The evaluating nurse testified that she assessed him based on his ability to function visually in his home. She reports that he can see food on his plate and that he wears bi-focals.

**Communication**, which is under functional abilities: Exhibit C-3 supports that the claimant's speech is impaired yet understandable with aids. The evaluating nurse assessed the claimant at a level 2 for impaired but understandable which assigns no point. The claimant testified during this hearing using no aids and his speech was understandable.

- 5) 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 22 points on a PAS completed by WVMI in December 2006 in conjunction with an annual reevaluation. For the previous level of care, "D" the claimant would require three additional points.
- 3) Evidence and testimony presented during the hearing, did support the need for two additional points to be awarded to the Claimant. These points should have been awarded in the areas of Arthritis and Wheeling. Testimony and evidence was clear that the claimant has a diagnosis of Arthritis and that he does use his wheel chair in his home. The only time he does not use his wheel chair inside his home is when there is not room for it.
- 4) Evidence and testimony regarding Vision and Communication was correctly assessed based on the claimant's functional abilities in these areas.
- 5) The Claimant's total number of points should have been assessed at 24, which 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 **uphold** 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 3<sup>rd</sup> Day of April 2007.**

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