



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

May 10, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 2, 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 B 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 C to Level B.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
[REDACTED] County Committee on Aging

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

_____, Claimant,

v.

Action Number: 07-BOR-658

**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 May 2, 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 May 2, 2007 on a timely appeal filed January 22, 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:

_____, Claimant

_____, Claimant's son

_____, Homemaker RN, _____ County Committee on Aging
_____, Homemaker, _____ County Committee on Aging

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services, BoSS, by speakerphone

_____, 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, 503.2.2 and Attachment 14

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 November 30, 2006
- D-3 Eligibility Determination dated November 00, 2006
- D-4 Notice of reduction in benefits dated January 9, 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 November 2006.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on November 30, 2006 and determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse assigned 16 points in her evaluation of the level of care the claimant requires. This falls in the Level B of care.

- 3) Four points were assigned for Medical Conditions and Symptoms. One point was assessed for vacating in the event of an emergency. Nine points were assessed in the area of functional abilities in the home. One point was assessed for Medication and one point for Dementia. The total points assessed were sixteen.

- 4) Witnesses for the Claimant raised issues in the following areas:

Dyspnea, which is under Medical Conditions/Symptoms: The claimant does experience shortness of breath when attempting to ambulate however; there was no documented diagnosis related to Dyspnea nor was there a prescribed medication for the symptoms.

Bathing, which is under Functional abilities in the home: At the time of the November assessment, the claimant, her son and homemaker were present. The homemaker reported that the claimant was unable to wash her whole body. She is unable to wash her left arm, under her left arm, feet, back, posterior legs and buttocks. She does not attempt a bath on the weekends when she has no help.

Dressing, The Claimant is able to assist some when being dressed. She does not attempt to dress on the weekend when she has no help. Her son states that if she did try to dress herself, it would probably take her 2 hours so she just does not get dressed. She has very little use of her right arm.

Grooming, The Claimant is able to clip her own fingernails and can put deodorant under her right arm. She can brush her teeth after others get the toothbrush ready for her.

The evaluating nurse assessed the Claimant as a level 2 with one point in bathing, dressing and grooming indicating that the claimant does need physical assistance in these areas.

- 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

6) Aged Disabled Waiver Manual Chapter 500, Attachment 14:

	Level 1	Level 2	Level 3
b. Bathing	Self/Prompting	Physical Assistance	Total Care
c. Dressing	Self/Prompting	Physical Assistance	Total Care
d. Grooming	Self/Prompting	Physical Assistance	Total Care

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 16 points on a PAS completed by WVMi in November 2006 in conjunction with an annual reevaluation. For the previous level of care, "C" the claimant would require two additional points.
- 3) Evidence and testimony presented during the hearing, did not support that the evaluating nurse should have awarded any additional points based on the documentation and verbal information given to her during the assessment.
- 4) There was a lack of evidence to support a diagnosis of Dyspnea and a lack of a prescribed medication to treat related symptoms. Policy is clear in 503.2.1 that these conditions must be based on medical evidence presented by appropriate medical professionals.
- 5) Information provided to the evaluating nurse on the day of the assessment regarding bathing, dressing and grooming support her assessment of a level 2 in these areas. Policy in Attachment 14 states that a level 2 is assigned if an individual needs physical assistance in the task. A level 3 would indicate that the individual could not participate and needs total care. Testimony at the hearing did not disprove the nurses finding.
- 6) The evaluating nurse correctly assessed a total number of sixteen (16) points, which is indicative of a Level of Care "B" and renders the Claimant eligible for (93) 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 10th Day of May 2007.

Sharon K. Yoho
State Hearing Officer