



**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

May 18, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 9, 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
CWVAS
Libby Boggess, BoSS
[REDACTED] WVMI

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

_____,

Claimant,

v.

Action Number: 07-BOR-767

**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 9, 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 9, 2007 on a timely appeal, filed February 12, 2007. It should be noted that this hearing was originally scheduled for April 4, 2007. It was rescheduled at the Claimant's request to May 9, 2007.

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:

[REDACTED], Claimant
[REDACTED], Homemaker, Mountain CAP of WV, Inc.
[REDACTED], Case Manager, Central West Virginia Aging Services, Inc.
Libby Boggess, 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 January 25, 2007
- D-3 Notice of Decision dated January 31, 2007

VII. FINDINGS OF FACT:

- 1) The Claimant's birth date is listed as 05/06/1948. She is an active participant in the A/DW Program and her eligibility was undergoing a re-evaluation on January 25, 2007.
- 2) A WV Medical Institute nurse, DF, completed a Pre-Admission Screening (PAS-2000) on January 25, 2007 in the Claimant's home with the Claimant and her spouse 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 sixteen (16) points awarded. (Exhibits D-2 & D-3)

- 3) The Claimant's primary diagnoses listed on the referral form were seizure disorder, HTN, DM II non-insulin, osteoarthritis, and hypercholesterolemia. Secondary diagnoses: Peripheral neuropathy and sleep apnea syndrome.
- 4) The January 25, 2007 PAS (Exhibit D-2) assigned this Claimant with sixteen (16) points in determining the level of care required. The evaluating nurse assigned five (5) points in the areas of Medical Conditions/Symptoms (c – dyspnea, d – significant arthritis, h – pain, I - diabetes, and l (other) – seizure disorder) and nine (9) points in the area of functional levels. The Claimant was assessed as being able to vacate in the event of an emergency with supervision (1 point), and not being able to administer her medication (1 point). The total points assigned were sixteen (16) 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 a diagnosis of mental disorder – depression under #23, decubitus under #24, and transferring (item h under #26 functional levels).
- 6) Testimony from the case manager revealed that it is noted on the PAS that the Claimant reported major depression. Although a point was given under #23 for seizures, the Claimant also has hypertension and hypercholesterolemia. Under transferring, the body of the PAS reads in part “Toilet – has rails and sometimes still requires assistance.She states approx. 3-4 times a month someone has to hold onto when she walks through the house.” No credit was given for decubitus. The case manager stated that on the PAS it is noted “Decubitus – ulcer on toe on edge of bone where toe was amputated. Dressings daily and prn per client.”
- 7) Testimony from the Claimant revealed that she sometimes needs someone to steady her when transferring. Testimony from the WVMI nurse revealed that when the Claimant was asked the question about transferring she had replied she sometimes needed assistance, it was not total assistance with transferring. The Department later conceded that the Claimant would be a level 3 for transferring and this would give an additional point and bring the total to seventeen (17).
- 8) Testimony from the BoSS representative noted there was no clinical documentation of a mental disorder. A seizure disorder is not a mental disorder. The Claimant is not on any medication for a mental disorder. A diabetic ulcer on a toe does not correlate necessarily with a decubitus. This is more vascular than a pressure sore.
- 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 oxygene.
- #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 16 points, which falls within the Level B of care.
- 2) An additional point is awarded under transferring as the Department conceded that the Claimant does meet the criteria for level 3 as she sometimes needs physical assistance in order to transfer.

- 3) No additional point is awarded for decubitus as it was not clearly demonstrated through the evidence or testimony that the Claimant had a pressure sore at the time of the assessment.
- 4) No additional point is awarded for a medical condition (#23) of a mental disorder. There was no diagnosis from the physician of depression nor was the Claimant taking any medication for depression at the time of the assessment.
- 5) There is a total of seventeen (17) points assigned to the Claimant. Seventeen (17) 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 January 25, 2007. 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 January 31, 2007 will be taken.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 18th Day of May, 2007.

**Margaret M. Mann
State Hearing Officer**