



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 468  
Hamlin, WV 25523

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

December 2, 2008

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

Dear \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 12, 2008. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your level of care 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 document 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 Section 501)

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 **reverse** the proposal of the Department to decrease your Level of Care under the Aged/Disabled Waiver Program from Level C to Level B.

Sincerely,

Cheryl Henson  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
BoSS  
WVMI  
PPL

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 08-BOR-1907**

**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 November 12, 2008 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 November 12, 2008 on a timely appeal filed August 12, 2008.

It should be noted 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's Witnesses:

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

Department's Witnesses:

Kay Ikerd, BOSS, Department's Representative, participating by telephone  
Teena Testa, WVM, participating by telephone

Presiding at the hearing was Cheryl Henson, 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 Section 501

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

D-1 Aged/Disabled Home and Community-Based Services Manual Sections 501.3.2.1, 501.3.2.2

D-2 Pre-Admission Screening (PAS) assessment completed on August 1, 2008

D-3 Notice of Decision dated August 6, 2008

**Claimant's Exhibits:**

None

**VII. FINDINGS OF FACT:**

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter called ADW, was undergoing an annual reevaluation to verify continued medical eligibility in August 2008.

- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (PAS) Pre-Admission Screening form (D-2) on August 1, 2008 and determined that the Claimant continues to meet the medical eligibility criteria.
- 3) Four (4) points were assessed for Medical Conditions and Symptoms. One (1) point was assessed for ability to vacate a building. Ten (10) points were assessed in the area of functional abilities in the home; specifically: eating, bathing, dressing, grooming, bladder incontinence, bowel incontinence, transferring, walking and wheeling. One (1) point was assessed for medication administration. A total of sixteen (16) points were assessed during the screening.
- 4) Witnesses for the Claimant raised issues in the following area:

**Wheeling**, which is under Functional Abilities: The Claimant was rated as “situational assistance”. The WVMI nurse recorded the following on the PAS:

CLIENT DOES USE AN ELECTRIC WHEELCHAIR IN THE HOME. CLIENT NOTES HE DOES GET TIED UP IN THE DOORWAYS AND SOMEONE HAS TO HELP HIM. SOMEONE USUALLY HAS TO PUT THEIR HANDS IN THE BACK AND RESET THE SCOOTER. HE NOTES IF HE IS ON THE GRASS AND IT IS WET THEN THE WHEELCHAIR WOULD STOP AND HE HAS TO GET SOMEONE TO RESET THE CHAIR.

The Claimant testified that as a result of Meniere’s disease he has episodes approximately 12 to 15 times per month where he is completely helpless due to a complete loss of balance and must have two people help him to bed. Once he has assistance getting into bed he usually stays there until the episode ends. He indicated the episodes vary in the length of time he is incapacitated. He stated he drove himself to the hearing today as he had no one to help him, but if he were to have an episode while out he would probably need an ambulance in order to get home

**Walking**, which is under Functional Abilities: The Claimant was rated as “supervised/assistive device”. The WVMI nurse recorded the following on the PAS:

WHEN IT COMES TO WALKING CLIENT NOTES THE MENIERES HITS HIM AND HE LOOSES [SIC] ALL SENSE OF BALANCE. HE NOTES THE SCARY PART IS THE NOT KNOWING WHEN THIS WILL HAPPEN. WHEN HE GOES OUTSIDE HE MAKES SURE \_\_\_\_\_ OR \_\_\_\_\_ IS WITH HIM. CLIENT DOES USE THE FURNITURE OR THE CANE AS HE WALKS IN THE HOME. OUTSIDE HE USES THE POWER CHAIR. I DID ASK THE CLIENT TO SHOW ME HOW HE WALKS IN THE HOME. CLIENT WAS SITTING ON HIS CHAIR AND DID USE HIS CANE TO GET UP. \_\_\_\_\_ HAD TO HELP HIM TO STAND. HE TOOK A FEW STEPS AND WALKED

BACK.

The Claimant again testified that as a result of Meniere's disease he is often – between 12 to 15 times per month – totally incapacitated due to complete loss of balance and requires two persons to physically assist him in order to get to his bed. He stays in bed until the sense of balance returns.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501 (D-1) states in pertinent part:

There are 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)
- #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
- #35- 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 during the PAS assessment.
- 2) The Claimant received sixteen (16) points on a PAS completed by WVMI in August 2008 in conjunction with a re-evaluation. For the previous level of care, the Claimant would need at least eighteen (18) points.
- 3) Evidence and testimony presented during the hearing support the finding of two (2) additional points for the Claimant. He clearly indicated during the assessment that although he normally needs less help, when he has episodes of Meniere's disease he requires more assistance in some

areas. He stated that he usually requires “two person assistance” in the areas of walking and wheeling when he has an episode of Meniere’s. I find the Claimant’s testimony credible.

- 4) The total amount of points assessed amount to eighteen (18), and support the finding of Level “C” for this Claimant.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** 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 2<sup>nd</sup> Day of December, 2008**

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**Cheryl Henson  
State Hearing Officer**