



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Joe Manchin III  
Governor

Patsy Hardy, FACHE, MSN, MBA  
Cabinet Secretary

September 11, 2009

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 9, 2009. 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 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 501.3)

Information submitted at your hearing reveals that you continue to require the degree of care and services necessary to qualify medically for the Aged/Disabled Waiver Program and your documented medical conditions confirm that your Level of Care should be a Level "B" rating. As a result, you are eligible to receive three (3) hours per day or 93 hours per month of homemaker services.

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.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

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

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

-----,

**Claimant,**

**v.**

**Action Number: 09-BOR-1498**

**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 September 11, 2009 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 September 9, 2009 on a timely appeal filed June 18, 2009 and received by the Hearing Officer on July 14, 2009.

It should be noted that the Claimant's benefits have continued pending a hearing decision.

**II. PROGRAM PURPOSE:**

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 witness

-----, RN, Claimant's witness

-----, Claimant's witness

Kay Ikerd, RN, Department's witness (participated telephonically)

Heather Randolph, RN, Department's witness (participated telephonically)

Presiding at the hearing was Pamela L. Hinzman, 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 501.3.2.1 and 501.3.2.2

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

**Department's Exhibits:**

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

D-2 Pre-Admission Screening (PAS) assessment completed on May 26, 2009

D-3 Notice of Decision dated June 2, 2009

**Claimant's Exhibits:**

C-1 Information from Dr. [REDACTED] dated September 8, 2009

**VII. FINDINGS OF FACT:**

- 1) The Claimant, a recipient of Aged/Disabled Waiver (ADW) Medicaid benefits, underwent an annual reevaluation to verify continued medical eligibility for the program.
- 2) West Virginia Medical Institute (WVMI) Nurse Heather Randolph completed a medical assessment (D-2) on May 26, 2009 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 13 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care "B" - eligible for three (3) hours per day or 93 hours per month of homemaker services. It should be noted that the Claimant previously qualified for a Level of Care "C"- eligible for four (4) hours per day or 124 hours per month of homemaker services.

- 3) The Claimant was sent notification on June 2, 2009 (D-3) advising her of the proposed reduction in homemaker service hours.
- 4) The Claimant's witnesses provided Exhibit C-1, a letter from Dr. [REDACTED] dated September 8, 2009. The letter states that the Claimant uses a cane and requires one-person assistance with transfers at times. Witnesses testified that the Claimant, who has osteoporosis and is a diabetic, requires one-person assistance when she is having a "bad day." The Claimant has reportedly fallen in the past. Central West Virginia Aging Services Case Manager ----- testified that the PAS was completed in the morning hours and that the Claimant often becomes tired and weak by late afternoon. The Claimant testified that she has a "drop foot."

The WVMi Nurse testified that the Claimant and her homemaker did not report the need for one-person assistance with transfers at the time of the assessment. The Claimant had been rated at Level 2 (supervised/assistive device) in transferring during the PAS.

Based on information provided during the hearing, one (1) additional point is awarded to the Claimant for one-person assistance with transfers. In light of reported variations in the Claimant's physical condition, it is reasonable to believe that she requires physical assistance with transfers when she is in a weakened state.

-----, the Claimant's homemaker, testified that she has had to feed the Claimant at times, however, limited information was provided. Addressing the issue of eating would be moot since a point for physical assistance with eating would only bring the Claimant's total points to 15 and she would continue to lack the number of points required for a Level "C" Level of Care.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Sections 501.3.2.1 and 501.3.2.2 (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)
- #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 obtained on the PAS assessment tool.
- 2) The Claimant was awarded 13 points as the result of a PAS completed by WVMi in May 2009 in conjunction with her annual medical evaluation.
- 3) As a result of information presented during the hearing, one (1) additional point is awarded to the Claimant for one-person physical assistance with transfers.
- 4) The addition of one (1) point brings the Claimant's total number of points to 14, which is indicative of a Level of Care "B" (10 to 17 points).

## **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 11th Day of September, 2009.**

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**Pamela L. Hinzman**  
**State Hearing Officer**