



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

January 21, 2009

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 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 (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,

Cheryl Henson  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
BoSS  
WVMI  
Public Partnership, LLC

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

\_\_\_\_\_,

**Claimant,**

**v.**

**Action Number: 08-BOR-2396**

**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 January 9, 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 January 9, 2009 on a timely appeal filed November 3, 2008.

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 daughter

Department's Witnesses:

Kay Ikerd, BOSS, Department's Representative, participating by telephone

Kathy Gue, WVMi, 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 Sections 503.2, 503.2.1, 503.2.2, and 503.3.1

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

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 501
- D-2 Pre-Admission Screening (PAS) assessment completed on October 10, 2008
- D-3 Notice of Decision dated October 21, 2008 from WVMi
- D-4 Request for Hearing form signed October 27, 2008
- D-5 Copy of note from physician indicating patient has "OA"

**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 October 2008.

- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (PAS) Pre-Admission Screening form (D-2) on October 10, 2008 and determined that the Claimant continues to meet the medical eligibility criteria.
- 3) Seven (7) points were assessed for Medical Conditions and Symptoms. One (1) point was assessed for ability to vacate a building. Twelve (12) points were assessed in the area of functional abilities in the home; specifically: eating, bathing, dressing, grooming, occasional bladder incontinence, bowel incontinence, orientation, transferring, and walking. One (1) point was assessed for medication administration, and one (1) point was assessed for terminal prognosis. A total of twenty-two (22) points were assessed during the screening.
- 4) Witnesses for the Claimant raised issues in the following area:

***Bathing***, which is under Functional Abilities: The Claimant was rated as needing physical assistance in this area. The WVMI nurse recorded the following on the PAS:

SHOWERS ON A SHOWER CHAIR. NEEDS HELP  
GETTING IN AND OUT. NEEDS HELP WITH  
GETTING FEET AND LEGS WASHED.

The Claimant's daughter added that her mother does wash her own face and can pick up her arm to assist with bathing, but she needs help washing her feet, legs, and private parts.

***Grooming***, which is under Functional Abilities: The Claimant was rated as needing physical assistance in this area. The WVMI nurse recorded the following on the PAS:

SOMEONE WASHES HER HAIR WHILE SHE IS IN  
THE SHOWER. SHE CAN BRUSH HER HAIR AND  
CLEANS HER TEETH. SHE CLIPS HER FINGERNAILS  
AND NEEDS SOMEONE TO CLIP HER TOENIALS.  
[sic]

The Claimant's daughter added that she doesn't clean her teeth. Her daughter combs her hair, washes her hair, and shaves her. She did state that both she and her mother clip her nails.

***Dressing***, which is under Functional Abilities: The Claimant was rated as needing physical assistance in this area. The WVMI nurse recorded the following on the PAS:

SHE SAYS THAT SHE NEEDS HELP WITH GETTING  
PANTS STARTED OVER HER FEET AND HELP WITH  
SOCKS.

The Claimant's daughter testified that her mother can assist in lifting her arms. When going to the doctor she must put her mother's clothes on her; however, she does give some assistance. She can lift her leg to put in her pants, and lift her arm to assist in

putting on shirts.

Hearing, which is under Functional Abilities: The Claimant was rated as “impaired/correctable” in this area. The WVMi nurse recorded the following on the PAS:

SHE SAYS THAT SHE WILL SOMETIMES HAVE  
PEOPLE REPEAT THEMSELVES.

The Claimant’s daughter states she has problems hearing; you have to be close enough to her to talk and she often doesn’t understand.

- 8) 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)
- #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

- 9) Aged/Disabled Home and Community Based Waiver Policy Manual Section 503.3.1E states in pertinent part:

#### **INITIAL MEDICAL EVALUATION**

Following is an outline of the initial medical evaluation process:

E. When the home visit is made, the QIO RN, through observation and/or interview process,

completes the PAS (Attachment 14). The RN will record observations and findings regarding the applicant's level of function in the home. RNs do not render medical diagnoses. In those cases where there is a medical diagnosis question, the QIO RN will attempt to clarify the information with the referring physician. In the event that the RN cannot obtain the information, he/she will document such, noting that supporting documentation from the referring physician was not received.

#### **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 twenty-two (22) points on a PAS completed by WVMI in October 2008 in conjunction with an annual evaluation. For the previous level of care, the Claimant would need at least twenty-six (26) points.
- 3) Evidence and testimony presented during the hearing supports the need for an additional one (1) point to be awarded for hearing. Evidence and testimony support the finding that the Claimant is often unable to hear effectively even when adjustments are made.
- 4) The total amount of points assessed amount to twenty-three (23), and support the finding of Level "C" for this Claimant.

#### **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 21<sup>st</sup> Day of January, 2009**

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**Cheryl Henson  
State Hearing Officer**