



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

July 15, 2009

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 18, 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 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  
CCIL

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

-----,

**Claimant,**

**v.**

**Action Number: 09-BOR-933**

**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 June 18, 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 June 18, 2009 on a timely appeal filed March 16, 2009.

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

**II. PROGRAM PURPOSE:**

The ADW Program is defined as a long-term care alternative that provides services that enable an individual to remain at or return home rather than receiving nursing facility (NF) care. Specifically, ADW services include Homemaker, Case Management, Consumer-Directed Case Management, Medical Adult Day Care, Transportation, and RN Assessment and Review.

**III. PARTICIPANTS:**

Claimant's Witnesses:

-----, Claimant

-----, Case Manager, CCIL

-----, Claimant's mother

-----, Claimant's Homemaker

Department's Witnesses:

Kay Ikerd, BOSS, Department's Representative  
Christine Miller, WVM

Presiding at the hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

It should be noted that the Department's witnesses participated by telephone.

#### **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

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

##### **Department's Exhibits:**

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 501
- D-2 Pre-Admission Screening (PAS) assessment completed on March 3, 2009
- D-3 Notice of Decision letter dated March 5, 2009

##### **Claimant's Exhibits:**

- C-1 Letter from [REDACTED] PA-C dated March 27, 2009

#### **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 March 2009.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (PAS) Pre-Admission Screening form (D-2) on March 3, 2009 and determined that the Claimant continues to meet the medical eligibility criteria.
- 3) Five (5) points were assessed for Medical Conditions and Symptoms. One (1) point was assessed for ability to vacate a building. Nine (9) points were assessed in the area of functional abilities in the home; specifically: eating, bathing, dressing, grooming, total

incontinence of bowel, orientation, transferring, and walking. One (1) point was also assessed for medication administration. A total of sixteen (16) points were assessed during the screening and he was assessed as level (B). The Claimant would need two (2) additional points for a total of eighteen (18) in order to be assessed at level (C).

- 4) The Claimant submitted a letter from his physician (C-1) dated March 27, 2009 which states in pertinent part:

This request is in reference to -----. I have been -----'s primary care provider for over five years. He, as you know, has had a tumor in his brain that was surgically removed and has left him with multiple neurologic deficits including hallucinations, impaired memory, disorientation, impaired judgment, depression, seizure disorder, visual impairment, ataxia, and incontinence of bowel and bladder. He also suffers from tremors that limit his ability to perform ordinary daily functions when they are present including writing, any fine motor skills involving the hands, and even eating at times. His tremors tend to be intermittent.

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

**Bladder incontinence**, which is under Functional Levels: The Claimant was rated as "continent". The WVMi nurse recorded the following on the PAS:

Incontinent supplies: no  
Bedside commode: yes  
Bladder – incontinence  
HM (homemaker) reports he doesn't have any trouble with his urine;  
Mem (member) reports "I can get to the bathroom most of the time with that but the other I have a lot of trouble with, like every day it seems like but I don't want to wear a diaper."

The Claimant's homemaker stated that the Claimant is incontinent. He wets the bed and has accidents. The Claimant stated that he has accidents with his bladder about four (4) times weekly and doesn't have a social life because of this problem. He states he often has accidents at night when he is in bed. The Department pointed out that the Claimant agreed with the nurse's recorded comments on the date of the assessment; however, the Claimant was rated as "intermittent disoriented" on the date of the assessment, and had to be told the date in order to enter it on the forms.

**Vision**, which is under Functional Levels: The Claimant was rated as "impaired/correctable". The WVMi nurse recorded the following pertinent information on the PAS:

Mem (member) reports his vision isn't bad but he reports his vision changes due to his ICP; HM (homemaker) reports some days he is just miserable with his eyes, red, itchy but he can see. He reports he has vertigo if he closes his eyes.

The Claimant's homemaker stated he has a lot of trouble with his eyes burning due to nerve damage. The Claimant stated he woke up half blind in the hospital, and doctors said ventricles in the brain were swollen on the optic nerves. He states that sometimes he can see pretty "good", but has tunnel vision and twilight vision which is not correctable. The homemaker states that some days he is unable to function in the home. He wears patches over his eyes at times due to these problems.

- 8) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2.1 and 5-1.3.2.2 (D-1):

There are four levels of care for 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

- 9) Aged/Disabled Home and Community Based Waiver Policy Manual Section 501 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 sixteen (16) points on a PAS completed by WVMi in March 2009 in conjunction with an annual evaluation, which resulted in a reduction in level of care. For the previous level of care, the Claimant would need at least two (2) additional points for a total of eighteen (18).
- 3) Evidence and testimony presented during the hearing supports the need for additional points to be awarded in the areas of bladder incontinence and vision, for a total of two (2) additional points. The evidence shows the Claimant is intermittently incontinent of bladder. Although the Claimant was documented to agree with the nurse's assessment, he clearly is shown to be intermittently disoriented which calls into question his agreement during the assessment. In the area of vision, the Claimant has at times such problems with his eyes that he must wear patches over them which renders him completely unable to see. This condition is not correctable; therefore the claimant is awarded a point in this area.
- 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 15th Day of July, 2009**

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**Cheryl Henson  
State Hearing Officer**