



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
227 Third St.  
Elkins, WV 26241

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

October 5, 2005

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

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 4, 2005. 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 your 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 520 & 570.1)

Information submitted at your hearing revealed 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 decrease to 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 proposed action 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  
Select In-Home Services

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

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

**v.**

**Action Number: 05-BOR-6220**

**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 October 5, 2005 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 October 4, 2005 on a timely appeal filed July 13, 2005.

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:**

\_\_\_\_\_, Claimant  
\_\_\_\_\_, daughter of Claimant  
\_\_\_\_\_, Claimant's granddaughter and Homemaker  
[REDACTED] RN, Select In-Home Services  
[REDACTED] RN, WVMI  
Brian Holstein, Licensed Social Worker, BoSS (participating 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 520, 570 and 580

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

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

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 520, 570 and 580
- D-2 Pre-Admission Screening (PAS) 2000 assessment completed on April 14, 2005
- D-3 Notice of Decision dated April 21, 2005

### **VII. FINDINGS OF FACT:**

- 1) The Claimant's Aged & Disabled Waiver case, hereinafter ADW, was undergoing an annual reevaluation to verify continued medical eligibility.
- 2) Jane Meadows, RN, West Virginia Medical Institute, completed a medical assessment (D-2) on April 14, 2005 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 16 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a LOC "B" (16 points)- eligible for three (3) hours per day or 93 hours per month of homemaker services.
- 3) The Claimant was notified of the decision in a letter from WVMI dated April 21, 2005 (D-3).

- 4) Witnesses for the Claimant contended that additional points should be awarded in the following areas:

**Dysphagia-** The Claimant's witnesses indicated she has had ongoing problems with swallowing and with medications becoming stuck in her throat. Ms. Meadows stated that dysphagia was not reported to her on the date the PAS was completed. Based on credible testimony that the Claimant's difficulty in swallowing has been an ongoing problem, one (1) additional point is awarded for dysphagia.

**Orientation-** The Claimant's witnesses testified that she has periods of confusion and hallucinates, claiming that she sees butterflies flying out of her ceiling fan. She is depressed and has impaired judgment. Those testifying said they have been aware of the hallucinations since June 2005, but do not know how long they had been occurring prior to that time. Mr. [REDACTED] contended that an individual can hallucinate but maintain orientation. Since there is no indication of how long the confusion/hallucinations have been occurring, intermittent disorientation cannot be established.

**Transferring and walking-** The Claimant's witnesses testified that her right foot is numb and she waivers when she walks. They testified that she requires a cane plus a one-person assist with these activities. Ms. Meadows stated that the Claimant ambulated with a cane on the date of the assessment and walked outside by herself to smoke a cigarette. No additional points are awarded for transferring and walking as the Claimant was able to ambulate with a cane with no additional assistance on the date of the assessment.

- 5) The Aged/Disabled Home and Community-Based Services Manual 580.2 and 580.2,b (D-1) provides that a medical eligibility reevaluation may include either a periodic or annual reevaluation. The purpose of the reevaluations is to confirm and validate an individual's continued medical eligibility for ADW services and to establish whether there is any change in the LOC the individual requires. All clients must be evaluated at least annually.
- 6) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 570.1 and 570.1.d (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- 1 point for each (can have total of 12 points)
- #24- 1 point
- #25- 1 point for B, C or D
- #26- Level I- 0 points  
Level II- 1 point for each item A through I  
Level III- 2 points for each item A through M; I (walking) must be equal to or greater than Level III before points are given for J (wheeling)  
Level IV- 1 point for A, 1 point for E, 1 point for F, 2 points for G through M
- #27- 1 point for continuous oxygen
- #28- 1 point for Level B or C
- #34- 1 point for Alzheimer's or other dementia
- #35- 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. The Claimant was awarded 16 points and assigned a Level of Care "B" as a result of a PAS completed by Ms. Meadows on April 14, 2005.
2. Based on information presented during the hearing, testimony is credible that the Claimant suffers from dysphagia and one (1) additional point is awarded for this condition.
3. The awarding of one (1) additional point brings the Claimant's total number of points to 17, which equates to a Level of Care "B" (10 points to 17 points) and does not change the number of homemaker service hours proposed by the Agency.

**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 5th Day of October, 2005.**

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**Pamela L. Hinzman**

**State Hearing Officer**