



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

Bob Wise
Governor

Paul L. Nusbaum
Secretary

January 10, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 5, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker service hours under the Medicaid Title XIX (Home & Community-Based) Waiver 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.

One of these regulations specifies that for the Aged and 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 WVMl. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual 520 & 570.1)

Information submitted at the 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 remain at a Level "C" rating. As a result, you are eligible to receive four (4) hours per day or 124 hours per month of homemaker services.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Agency to reduce your homemaker service hours under the Medicaid Title XIX (HCB) Waiver Program.

Sincerely,

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

cc: Chairman, Board of Review
[REDACTED] Case Manager, CWVAS
WVMl
BoSS

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

NAME: _____

ADDRESS: _____

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 10, 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 January 5, 2005 on a timely appeal filed August 10, 2004. The hearing was originally scheduled for December 22, 2004, but was rescheduled at the request of the Department.

It should be noted that services under the Medicaid Title XIX Waiver (HCB) Program have continued at the previous level pending the results of this hearing.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE:

The Program entitled **Medicaid Title XIX Waiver (HCB)** 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.

II PARTICIPANTS:

██████████ Case Manager, CWVAS
Kay Ikerd, RN, BoSS
Sue Bailey, RN, WVMI

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

IV QUESTION TO BE DECIDED:

The question to be decided is whether the Agency is correct in its proposal to reduce the Claimant's homemaker service hours under the Medicaid Title XIX Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled and Community-Based Services Waiver Policy Manual Sections 520, 570 and 580

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

- D-1 Aged/Disabled Home and Community-Based Services Waiver Policy Manual 520, 570 and 580
- D-2 Pre-Admission Screening form PAS-2000 dated August 2, 2004
- D-3 Notice of Decision dated August 4, 2004

VII. FINDINGS OF FACT/CONCLUSIONS OF LAW:

(1) The Claimant's Aged and Disabled Waiver case was undergoing an annual medical reevaluation to verify continued medical eligibility and to determine the appropriate Level of Care, hereinafter LOC. It should be noted that the Claimant was receiving homemaker services at a level "C" LOC at the time of the evaluation.

(2) On August 4, 2004, a Notice of Decision (D-3) was sent to the Claimant which states:

The West Virginia Medical Institute (WVMI) is the Quality Improvement Organization (QIO) authorized by the Bureau for Medical Services of the West Virginia Department of Health and Human Resources to determine medical necessity for the Aged and Disabled Waiver Program. You have been determined medically eligible to continue to receive in-home services under the Aged and Disabled Waiver Program. The number of homemaker service hours approved is based on your medical needs, and cannot exceed 93 hours per month.

(3) Sue Bailey, RN, WVMI, completed a PAS-2000 medical assessment (D-2) for the Claimant on August 2, 2004. WVMI reviewed the medical assessment and the Claimant continues to meet the medical eligibility criteria. She 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.

Points were awarded in the following areas on the PAS-2000:

- Question 23- Total 8 points (1 point awarded for each stated medical condition of angina at rest, dyspnea, significant arthritis, dysphagia, pain, diabetes, mental disorder and sleep apnea)
- Question 24- Decubitis, 0 points
- Question 25- Vacating, 1 point
- Question 26- Functional levels, total 7 points awarded as follows: eating, 1 point; bathing, 1 point; dressing, 1 point; grooming, 1 point; bladder incontinence, 2 points; walking, 1 point
- Question 27- Professional/technical needs- 0 points

Question 28- Medication administration- 0 points

Question 34- Alzheimer's, multi-farct, senile dementia or related condition- 0 points

Question 35- Prognosis, stable, 0 points

- (4) Ms. █████ contended the Claimant should be awarded additional points in the following areas:

Question 23b - Angina upon exertion- Ms. █████ said the Claimant reports experiencing angina upon exertion. The Claimant weighs more than 420 pounds, is morbidly obese and cannot engage in significant physical activity. Ms. Bailey said the Claimant reported angina at rest but not upon exertion on the date the PAS was completed.

Question 26h- Transferring- Ms. █████ said the Claimant requires a supervised assisted device for transferring. She said the Claimant can push herself off her bed, but cannot rise directly from a lower piece of furniture without using an arm rest, cane or walker. Ms. Bailey stated the Claimant was sitting on her bed on the date of the PAS assessment as she was on bed rest awaiting surgery and did not require assistance rising from the bed. Ms. █████ said chronic lumbar disc disease, arthritis and edema make it difficult for the Claimant to raise herself from chairs and other furniture.

Question 28- Medication administration- Ms. █████ said the Claimant has difficulty opening her prescription bottles. Ms. Ikerd explained a pharmacist can provide the Claimant with specially-designed bottles which are easier for the elderly and disabled to access. No problems were noted with missed dosages.

- (5) The following findings are noted as a result of the evidence presented on behalf of the Claimant. Two (2) additional points should be assigned in accordance with the following:

Question 23b- Angina upon exertion. Because of the Claimant's obesity and inability to engage in significant activity, it is reasonable that she would have angina upon exertion if she experiences the condition at rest.

Question 26h- Transferring. Because of the Claimant's obesity, chronic lumbar disc disease, arthritis and edema, it is reasonable that the Claimant would require assistance in transferring from a chair or low piece of furniture. The Claimant's functional ability in this area is raised to a Level 2, supervised/assistive device.

- (6) The Aged/Disabled Home and Community Based Services Manual 580.2 & 580.2,b (D-1) provides that a medical eligibility reevaluation may include either a periodic or annual reevaluation. The purpose of the either of these 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.

- (7) 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 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 if Alzheimer's or other dementia
- #35 - 1 point if terminal

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. DECISION:

Policy provides that individuals who medically qualify for the Aged and Disabled Waiver Services Program are evaluated and assigned a Level of Care. The Level of Care, A through D, provides the number of homemaker services hours for which the individual is eligible. The Level of Care (LOC) is determined by reviewing the PAS-2000 and assigning points to qualifying documented medical findings as directed by policy.

The Pre-Admission Screening Form (PAS-2000) completed on August 2, 2004 by WVMI reveals that the Claimant was awarded 16 points and assigned a Level "B" LOC rating. Testimony and documentation received at the hearing supports the assignment of two (2) additional points - angina upon exertion and transferring - for a total of 18 points. This finding changes the LOC rating proposed by the Agency to Level of Care "C" (18 to 25 pts.) and the Claimant is eligible to receive 4 hours per day or 124 hours per month of homemaker services.

After reviewing the information presented during the hearing and the applicable policy and regulations, it is the ruling of the State Hearing Officer to **reverse** the proposal of the Agency to reduce the Claimant's homemaker service hours to a Level "B" LOC - 3 hours per day or 93 hours monthly.

IX. RIGHT OF APPEAL

See Attachment.

X. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.