



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

January 18, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 13, 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 WVM I. (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
██████████ Case Manager, CWVAS
WVM I
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 18, 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 13, 2005 on a timely appeal filed July 13, 2004. The hearing was originally scheduled for December 17, 2004, but was rescheduled at the request of the Claimant.

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
_____ Homemaker, CARE, Inc.
Kay Ikerd, RN, BoSS
Judy Bolen, 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 June 23, 2004
- D-3 Notice of Decision dated June 28, 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 June 28, 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) Judy Bolen, RN, WVMI, completed a PAS-2000 medical assessment (D-2) for the Claimant on June 23, 2004. WVMI reviewed the medical assessment and the Claimant continues to meet the medical eligibility criteria. She was assigned 14 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a LOC "B" { 14 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 5 points (1 point awarded for each stated medical condition of dyspnea, significant arthritis, pain, mental disorder and severe anxiety)
- Question 24- Decubitis, 0 points
- Question 25- Vacating, 1 point
- Question 26- Functional levels, total 7 points awarded as follows: bathing, 1 point; dressing, 1 point; grooming, 1 point; bladder incontinence, 2 points; orientation, 1 point; and transferring, 1 point.
- Question 27- Professional/technical needs- 0 points
- Question 28- Medication administration- 1 point
- Question 34- Alzheimer's, multi-farct, senile dementia or related condition- 0 points

Question 35- Prognosis, deteriorating, 0 points

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

Questions 23e and 23j- Paralysis and contractures- Mr. █████ testified the Claimant has paralysis in one of her legs and also has contractures in her toes. Ms. _____ stated that she has paralysis in her right toes and suffers from rheumatoid arthritis. Ms. █████ stated the term paralysis indicates that an individual does not have functional ability of a limb. Ms. Ikerd stated paralysis does not include a joint frozen as a result of arthritis or gout. It was noted contractures involve a fixed joint.

Question 26f- Bowel incontinence- Mr. █████ stated that nursing comments on the PAS indicate the Claimant has occasional bowel incontinence. Ms. █████ said she would agree with awarding one point in this area as an error may have occurred.

Questions 26h and 26i- Transferring and walking- Mr. █████ said the Claimant's homemaker must help her out of bed and off the sofa. He said the homemaker steadies the Claimant from behind because the Claimant has fallen in her home when she does not receive physical assistance with ambulation. Ms. █████ testified that the Claimant used the couch to transfer herself on the date of the assessment, but ambulated independently. No other individuals were at the Claimant's residence on the date of the assessment. Mr. █████ referred to nursing comments on the PAS which state that Ms. █████ "observed her (the Claimant) attempting to roll on her side with a pillow that she had under her legs. Says she then pushes on back of sofa and rolls off into floor to get up." Mr. █████ contended that rolling onto the floor would not be considered a "good transfer" and would not be in the Claimant's best health interest. Ms. _____ testified that her homemaker helps her get up and assists her in walking through her residence. Ms. █████ said the Claimant has fallen when she is alone and there are times when the Claimant does not get up after she leaves for the day. When Ms. █████ returns to the residence, she discovers the Claimant has not moved. Ms. _____ said she sometimes does not make it to the bathroom and she must do the best she can to ambulate when she is alone.

- (5) Based on testimony, four (4) additional points are awarded on behalf of the Claimant as follows: One additional point is awarded for bowel incontinence. Two additional points are awarded for walking, which is raised from Level I to Level III, one-person assistance. One additional point is awarded for transferring, which is raised from Level II to Level III, one-person assistance. Testimony is clear that the Claimant has fallen and experiences major difficulties when attempting to transfer/walk without the assistance of another individual.
- (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 service 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 June 23, 2004 by WVMI reveals that the Claimant was awarded 14 points and assigned a Level "B" LOC rating. Testimony and documentation received at the hearing supports the assignment of four (4) additional points for a total of 18 points. This finding changes the LOC rating proposed by the Agency to Level of Care "C" (18 to 25 points) and the Claimant is eligible to receive four (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 - three (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.