



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

January 12, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 20, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to decrease homemaker hours under the Aged Disabled Waiver, A/DW, 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 A/DW program is based on current policy and regulations. Some of these regulations state as follows: The Aged/Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who meet all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. (Aged/Disabled (HCB) Services Manual 570- 570.1b (11/1/03).

The information which was submitted at your hearing revealed that at the time of the September 2, 2005 Pre-Admission Screening Assessment, you did not meet the eligibility criteria for level of care D under the Aged/Disabled Waiver Program in which you were previously assessed.

It is the decision of the State Hearings Officer to **uphold** the proposed action of the Department to decrease homemaker hours to a level C under the A/DW program.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
_____, CWVAS - Boggess, BoSS - _____, WVMI

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

Claimant,

v.

Action Number: 05-BOR-6711

**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 December 20, 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 December 20, 2005 on a timely appeal, filed September 28, 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's Witnesses:

_____, claimant

_____, Central WV Aging Services (CWAS)
_____, claimant's homemaker

Department's Witnesses:

Libby Boggess, Bureau of Senior Services by phone

_____, WVMI by phone

Presiding at the Hearing was Sharon K. Yoho, 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 Department was correct in their decision to reduce homemaker hours under the Aged/Disabled Waiver (HCB) program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service Manual §570 and §580

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community based Services Manual §570.1 c,d. and §580.2
- D-1a Program Instruction memo dated November 1, 2004
- D-2 Pre-Admission Screening, PAS, completed September 2, 2005
- D-3 Eligibility Determination dated July 5, 2005
- D-4 Notice of reduction in homemaker hours dated September 15, 2005

VII. FINDINGS OF FACT:

- 1) Mr. _____ is a 52-year-old male. He is an active participant in the A/DW program and his eligibility was undergoing an annual evaluation on September 2, 2005.
- 2) A WV Medical Institute nurse completed a Pre-Admission Screening (PAS) in Mr. _____'s home with the claimant, Ms. _____ and his previous homemaker present. This PAS evaluation determined that the claimant remained eligible for the Aged/Disabled Waiver program however; it was determined that the level of care that he required had decreased from level D to a level C.

- 3) This claimant has primary diagnoses of Rheumatoid Arthritis and Cerebral Palsy.
- 4) Mr. _____ resides alone on the 2nd floor of an apartment complex.
- 5) The September 2, 2005 PAS assigned this claimant with 21 points in determining the level of care required. The evaluating nurse assigned six (6) points in the areas of Medical Conditions/Symptoms, thirteen (13) points were assigned in the area of functional levels, one (1) point was assigned for administration of medication and one (1) point for inability to vacate.
- 6) Issues raised by the claimant and his witnesses were in the areas of Angina at rest, Paralysis, Decubitis and Dressing. The nurse did not assign points in these areas except for one (1) point for needing assistance in Dressing.
- 7) The claimant had advised the evaluating nurse during the PAS that he does experience shortness of breath when he tries to walk. At the hearing he testified that he has chest pains when he exerts himself.
- 8) The claimant does have a condition known as Hemispheris, which is weakness of one-half of the body. Mr. _____ has no use of his legs however; he also has pain in his lower legs. He does not have a diagnosis of paralysis.
- 9) Mr. _____ wears adult diapers which causes sores where the plastic rubs his skin. He does not have a pressure sore which could be categorized as a decubitis.
- 10) The claimant is totally dressed and undressed by his homemaker. The only assistance that he can sometimes offer is his ability to raise his bent arms slightly away from his body. He cannot raise his arms up beyond abdominal level and he cannot straighten them out in front of him. On days when the weather is rainy, Mr. _____ does not have the ability to raise his arms. The evaluating nurse assigned only one (1) point for dressing since she believed that the claimant could assist with this task.
- 11) Aged/Disabled Home and Community Based Services Manual §570 – Program Eligibility for client:

Applicants for the A/DW Program must meet all of the following criteria to be eligible for the program:

- A. Be 18 years of age or older
- B. Be a permanent resident of West Virginia. The individual may be deinstitutionalized from a NF in any county of the state, or in another state as long as his permanent residence is in West Virginia.
- C. Be approved as medically eligible for NF Level of Care.
- D. Meet the Medicaid Waiver financial eligibility criteria for the program as determined by the county DHHR office, or the SSA if an active SSI recipient.

- E. Choose to participate in the A/DW Program as an alternative to NF care.
- 12)** Aged/Disabled Home and Community Based Services Manual § 570.1.a – Purpose:
The purpose of the medical eligibility review is to ensure the following:
- A. New applicants and existing clients are medically eligible based on current and accurate evaluations.
 - B. Each applicant/client determined to be medically eligible for A/DW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term services needs.
 - C. The medical eligibility determination process is fair, equitable and consistently applied throughout the state.
- 13)** Aged/Disabled Home and Community Based Services Manual# 570.1.b – Medical Criteria: An individual must have five deficits on the PAS to qualify medically for the A/DW Program. These deficits are derived from a combination of the following assessment elements on the PAS:
- A. #24: Decubitus - Stage 3 or 4
 - B. #25: In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. a) and b) are not considered deficits.
 - C. #26: Functional abilities of individual in the home.
 - Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)
 - Bathing ---- Level 2 or higher (physical assistance or more)
 - Grooming--- Level 2 or higher (physical assistance or more)
 - Dressing ---- Level 2 or higher (physical assistance or more)
 - Continence-- Level 3 or higher (must be incontinent)
 - Orientation-- Level 3 or higher (totally disoriented, comatose)
 - Transfer----- Level 3 or higher (one person or two person assist in the home)
 - Walking----- Level 3 or higher (one person or two person assist in the home)
 - Wheeling----- Level 3 or higher (must be Level 3 or 4 on walking in the home to use Level 3 or 4 for wheeling in the home. (Do not count outside the home)
 - D. #27: Individual has skilled needs in one or more of these areas B (g)suctioning , (h)tracheostomy, (i) ventilator , (k)parenteral fluids , (l)sterile dressings , or (m) irrigations.
 - E. #28: The individual is not capable of administering his/her own medication.

- 14) Aged/Disabled Home and Community Based Service Manual # 570.1.c,d:
There are four levels of care for clients of ADW Homemaker services. Points will be determined as follows, 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 1 - 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 B or C
- #34 - 1 point if Alzheimer's or other dementia
- #35 - 1 point if terminal

| | | |
|---------|--------------|---------------------|
| Level A | 5-9 points | 62 Hours per Month |
| Level B | 10-17 points | 93 Hours per Month |
| Level C | 18-25 points | 124 Hours per Month |
| Level D | 26-44 points | 155 Hours per Month |

VIII. CONCLUSIONS OF LAW:

- 1) The Aged Disabled Waiver policy provides that an individual must be assigned 26 to 44 points to qualify as requiring a Level D in care, which is 155 hours per month in homemaker services and 18 to 25 for Level C. The evaluating nurse assigned 21 points, which falls within the Level C of care.
- 2) The issues raised at the hearing were in the areas of Angina at rest, Paralysis, Decubitis and Dressing. Mr. _____ does experience discomfort in his chest when he exerts himself. His ability to assist in his dressing is questionable since all he can do is slightly raise his arms on some days. Testimony and evidence presented at the hearing regarding Paralysis and Decubitis did not substantiate that points should have been awarded in these areas.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the claimant should have been assigned a point for Angina at rest and possibly an additional point for dressing. This would only give the claimant 22 or 23 points which would continue to fall in the level of care C.

With the authority granted to me by the WV State Board of Review I am ruling to **uphold** the Agency's proposed action to decrease this claimant's homemaker services 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 12th Day of January 2006.

**Sharon K. Yoho
State Hearing Officer**