



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Joe Manchin III
Governor

Office of Inspector General
Board of Review
235 Barrett Street
Grafton WV 26354
April 27, 2006

Martha Yeager Walker
Secretary

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 24, 2006. Your hearing request was based on the Department of Health and Human Resources' determination concerning Level of Care (monthly hours of care services) 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/Disabled Waiver Program, hours of service are determined based on an evaluation of the Pre-Admission Screening Form (PAS). A Level of Care is determined by a point system. Points are derived from medical conditions and deficits set forth in the PAS. Program services are limited to a maximum number of units/hours that are determined by the PAS which is completed, reviewed and approved by WVMI. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual § 570.1-570.1. d)

The information submitted at the hearing revealed that as a result of your most recent medical evaluation (PAS), the agency determined your point total as 24 or a C Level of Care (124 hours maximum per month). Evidence offered established 2 additional points, resulting in a total of 26 points.

It is the decision of the State Hearing Officer to **reverse** the determination of the Agency as set forth in the October 11, 2005 notification. Evidence reveals that the claimant continues to qualify for a D Level of Care.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Libby Boggess, RN, Bureau of Senior Services (BoSS)
[REDACTED], West Virginia Medical Institute (WVMI)
[REDACTED], Central WV Aging Services

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

Claimant,

Action Number 05-BOR- 6828

v.

**West Virginia Department of Health and Human Resources,
Respondent.**

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Examiner resulting from a fair hearing concluded on April 26, 2006 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 April 24, 2006 on a timely appeal received by the Bureau of Senior Services October 20, 2005 and by the Board of Review November 23, 2005.

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.

III. PARTICIPANTS:

_____, claimant
_____, homemaker- Mountain Cap.
_____, HM, Mt. Cap.
_____, RN, Mt. Cap.
_____, CM, Central WV Aging Services

Kay Ikerd, RN, BoSS (by phone)

_____, RN, WVMI (by phone)

Presiding at the hearing was Ron Anglin, State Hearing Examiner and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the agency was correct in their determination concerning Level of Care (hours of care) under the Medicaid Title XIX Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled and Community-Based Services Waiver Policy Manual § 570.1- 570.1, d.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

- E-1 A/D Waiver Manual § 570.1, c and 520.2- 3 and 580- 580.3
- E-2 Medicaid Program Instruction MA-04-61, 11/1/04
- E-3 WVMI Independent Review (PAS) completed 9/22/05
- E-4 Notification, 10/11/05

VII. FINDINGS OF FACT:

1) The claimant is an active recipient of Aged/Disabled Home and Community-Based Waiver Services. As a result of an annual evaluation (E-3) completed by WVMI on September 22, 2005, WVMI determined the claimant's Level of Care to be C or 124 hours monthly- a reduction from level D. The agency provided notification to the claimant of the reduction in hours October 11, 2005 (E-4). The claimant requested a hearing in a request dated October 19, 2005. This hearing was scheduled for February 21, 2006 and continued at the claimant's request and convened April 24, 2006. It is noted that services under the Medicaid Title XIX Waiver (HCB) Program have continued at the previous level.

- 2) Exhibits as noted in Section VI above were presented.
- 3) Testimony was heard from the individuals listed in Section III above. All persons giving testimony were placed under oath.
- 4) Based on the medical evaluation of September 22, 2005 and testimony of the WVMH nurse, the Agency acknowledged a total of 24 points in determining a C "Level of Care".
- 5) The agency awarded 6 points in Section 23 of the evaluation: Dyspnea, Significant Arthritis, Paralysis, Pain, Contractures, and Other (MS). Additional conditions/symptoms considered in this section are Angina Rest, Angina Exertion, Dysphagia, Aphasia, Diabetes, and Mental disorder.
- 6) In Section 26 of the evaluation one point was awarded for *Bowel incontinence* (occasional- Level II).
- 7) Credible testimony provided by and on behalf of the claimant reveals that the claimant suffers from Dysphagia on a continuous basis having significant difficulty with choking and swallowing. She is also bowel incontinent at all times and wears pads fulltime for this condition.
- 8) Aged/Disabled Home and Community-Based Waiver Manual 570.1 and 570.1.d:
There will be 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 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)
* In the category of incontinence, the standard to establish occasional from total incontinence is determined by frequency- less than 3 times per week being occasional and more than 3 being total.
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. CONCLUSIONS OF LAW:

1) Policy requires a specific number and degree of functional deficits for the assignment of points to arrive at the Level of Care. The claimant was awarded a total of 24 points by the agency based on the evaluation of September 22, 2006, which resulted in a C "Level of Care".

2) Directives provide that in Section 23 of the medical evaluation, points (one for each condition) are awarded for each item under "Medical Conditions/Symptoms". Evidence reveals the claimant suffers Dysphagia- creating 1 additional point.

3) Policy provides that points are awarded in Section 26 of the medical evaluation for bowel incontinence, if continence is occasional – less than 3 times per week (1 point) and if the individual is totally incontinent – more than 3 times per week- 2 points are awarded. Evidence reveals that the claimant is totally bowel incontinent (Level III). This creates an additional point in the level of care determination.

4) Policy requires a minimum total of 26 points to qualify for a care level of D. The agency acknowledged a total of 24 points and evidence offered during the hearing provided 2 additional points. A total of 26 points results in a D level of care (a maximum of 155 hours per month).

IX. DECISION:

The Agency's determination as set forth in the October 11, 2005 notification is **reversed**. The claimant continues to qualify for a D Level of Care.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

Entered this 27th Day of April, 2006

RON ANGLIN
State Hearing Examiner

CLAIMANT'S RECOURSE TO ADMINISTRATIVE HEARING DECISION
For
Public Assistance Hearings,
Administrative Disqualification Hearings, and
Child Support Enforcement Hearings

A. CIRCUIT COURT

Upon a decision of a State Hearing Officer, the claimant will be advised he may bring a petition in the Circuit Court of Kanawha County within four months (4) from the date of the hearing decision.

The Court may grant an appeal and may determine anew all questions submitted to it on appeal from the decision or determination of the State Hearing Officer. In such appeals a certified copy of the hearing determination or decision is admissible or may constitute prima facie evidence of the hearing determination or decision. Furthermore, the decision of the circuit Court may be appealed by the client or petitioner to the Supreme Court of Appeals of the State of West Virginia.

B. THE UNITED STATE DEPARTMENT OF HEALTH AND HUMAN SERVICES

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the United States Department of Health and Human Services, Washington, D.C. 20201.

C. THE UNITED STATE DEPARTMENT OF AGRICULTURE

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the Department of Agriculture, Washington, D.C. 20250.



**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
HEARING DECISION TRANSMITTAL FORM**

DATE: August 10, 2007
TO: Libby Boggess, RN
Bureau for Senior Services
FROM: Ron Anglin, State Hearing Examiner
RE: NAME: _____
COUNTY: _____
CATEGORY: Medicaid, Aged Disabled Waiver- Level of Care

ATTACHED IS THE DECISION AND SUMMARY ON THE ABOVE-NAMED CASE:

In favor of the claimant **(REVERSED)**

**PLEASE COMPLETE THE BOTTOM OF THIS FORM AND RETURN ONE
COPY TO THE STATE HEARING OFFICER**

- Date Hearing decision implemented _____
- Effective Date _____
- Amount of Retroactive Payment _____
- Case Continued No Action Necessary _____
- No Action Necessary _____
- Action Not Taken (Give Reason) _____

Date _____ Signature _____
(Agency Employee)