



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Office of Inspector General

Board of Review

PO Box 29
Grafton WV 26354

July 27, 2006

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 3, 2006. 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.

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 20 or a C Level of Care (124 hours maximum per month). Evidence offered failed to establish sufficient additional points to change the Level of Care.

It is the decision of the State Hearing Officer to uphold the determination of the Agency as set forth in the December 22, 2005 notification. Evidence reveals that you qualified for a C Level of Care.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Family Service of [REDACTED] Counties Inc.
Bureau of Senior Services (BoSS)
West Virginia Medical Institute (WVMI)

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

Claimant,

v.

Action Number: 05-BOR-7258

West Virginia Department of Health and Human Resources,

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Examiner resulting from a fair hearing concluded on July 27, 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 May 3, 2006 on a timely appeal filed January 3, 2006. It should be noted here that the Claimant's benefits/services 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

_____, spouse

_____, HM/Daughter

_____, daughter

_____ CM

Kay Ikerd, RN, BoSS (participating telephonically)

_____ RN, WVMI (participating telephonically)

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

IV. QUESTIONS TO BE DECIDED:

The question 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 § 570.1.b & c

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

E-1 Aged/Disabled Home and Community-Based Services Manual § 520, 570 and 580

E-2 Pre-Admission Screening (PAS) 2000 assessment completed on December 15, 2005

E-3 Notification of decrease, December 22, 2005

Claimant's Exhibits:

C-1 Statement _____, 5/1/06

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-2) completed by WVMI on December 15, 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 December 22, 2005 (E- 3). The claimant requested a hearing in a request dated December 29, 2005. This request was received by this examiner January 27, 2006 and a hearing was convened May 3, 2006.

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 January 16, 2006 and testimony of the WVMI nurse, the agency acknowledged a total of 20 points in determining a "Level of Care".

5) The agency awarded 5 points in Section 23 of the evaluation: Dyspnea, Dysphagia, Diabetes, Mental Disorder and Other (high lipids). Additional conditions/symptoms considered in this section are Angina, significant Arthritis, paralysis, Aphasia, pain and Contractures.

6) In Section 25 of the evaluation the agency awarded a total of 14 points with points awarded in all categories except Orientation, Vision and Hearing. Transferring, Walking, Wheeling and Communication were classified as levels 4, 3, 3 and 3 respectively (2 points in each category). A point was also awarded for an ability to vacate.

7) Testimony provided on behalf of the claimant reveals that the claimant is able to aid with bathing by washing his hands. He participates in dressing by moving his arms into clothing. He wears pads for incontinence. He is unable to get to the bathroom and requires assistance to get there. He is sometimes wet when he gets there. He must be reminded about medication. He can pick up and ingest pills. He cannot brush his teeth. There are occasions when he must be feed.

8) Aged/Disabled Home and Community-Based Waiver Manual 570.1.c 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 2005:

#23 - 1 Point for each (can have total of 12 points) Medical condition

#24 - 1 Point Decubitus

#25 - Level I - 0 points Functional levels

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

#26 - 1 point for continuous oxygen

#27 - 1 point for "No" answer- medication administration

#33 - 1 point if Alzheimer's or other dementia

#34 - 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 20 points by the agency based on the evaluation of December 15, 2005, which resulted in a C "Level of Care".
- 2) 2 points each are awarded for "total care" in the categories of dressing and grooming. Evidence reveals the claimant is unable to do more than lift his arms to aid in dressing and he is unable to brush his teeth or otherwise participate in grooming. A finding of "total care" in these 2 categories is appropriate resulting in the addition of 2 additional points.
- 3) Policy requires a minimum total of 26 points to qualify for a care level of D. The agency acknowledged a total of 20 points. Evidence offered during the hearing convincingly established only 2 additional points for a total of 22.
- 4) A total of 24 points results in a C level of care - a maximum of 124 hours per month.

IX. DECISION:

The Agency's determination as set forth in the December 22, 2005 notification is upheld. The claimant qualified for a C Level of Care.

The claimant and the case management agency are reminded that if the claimant's care needs have increased since the December 15, 2005 evaluation, a process is in place to request additional hours 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 July, 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.