



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Ave.
Lewisburg, WV 24901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 20, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 24, 2006. 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 after review of the current PAS-2005, you meet the criteria for level of care B which equates to 93 service hours per month.

It is the decision of the State Hearing Officer to uphold the proposed action of the Department to decrease homemaker hours to a level B under the A/DW Program.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
_____, CCIL
Libby Boggess, BoSS
_____, WVMI

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

_____,

Claimant,

v.

Action Number: 06-BOR-982

**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 May 24, 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 24, 2006 on a timely appeal, filed January 26, 2006.

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
_____, Claimant's Spouse
_____, Case Manager, CCIL
_____, Home Aide, Pro Careers
Brian Holstine, LSW, BoSS (By Telephone)
_____, RN, WVMI (By Telephone)

Presiding at the Hearing was Margaret M. Mann, 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-2 Pre-Admission Screening, PAS, completed January 13, 2006
- D-3 Notice of Decision dated January 19, 2006

Claimant's Exhibits:

- C-1 Letter from Dr. _____ dated 02/14/06
- C-2 Discharge Summary from Princeton Community Hospital dated 02/26/06
- C-3 Statement from Dr. _____ dated 02/07/06

VII. FINDINGS OF FACT:

- 1) Ms. _____ is a 52-year-old female. She is an active participant in the A/DW Program and her eligibility was undergoing an annual evaluation on January 19, 2006.
- 2) A WV Medical Institute nurse, _____, completed a Pre-Admission Screening (PAS) in Ms. _____'s home with the claimant, her homemaker and her case manager 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 she required had decreased from level C to a level B with 16 points awarded.

- 3) This claimant's primary diagnoses listed on the referral form were muscular dystrophy, hypertension, high lipids, and a history of deep vein thrombosis.
- 4) The January 19, 2006 PAS assigned this claimant with 16 points in determining the level of care required. The evaluating nurse assigned four (4) points in the areas of Medical Conditions/Symptoms (e - paralysis, h - pain, k - mental disorder and l - high blood pressure) and eleven (11) points in the area of functional levels. The claimant was assessed as being physically unable to vacate by having a level 4 under walking and was assigned one (1) point. The total points assigned were sixteen (16) which is level B. This equates to 93 homemaker hours per month.
- 5) The issues contested in the hearing were in the areas of transferring, bathing and dyspnea under #23 Medical Conditions/Symptoms.
- 6) Testimony from the claimant revealed that her health has deteriorated quite a bit since the assessment was completed in January. She was hospitalized on February 23. Since then, she cannot transfer to the bathroom anymore. Her husband has to be called off of the job. She is a whole lot weaker. She has to have air continuously. She is afraid anymore to take a shower. She falls two or three times a week. She and her homemaker pray that they get everything where it needs to go. Her husband totally lifts her. They have a lift put it will not fit into the bathroom. It will get so far. If she goes to the commode, one person has to swing her in and hold her in the swing position in order for them to unfit her from that board and put her on the seat. Her husband recommends she wait until he gets home. Her husband has so much to do with his work. She and her homemaker try to do as much as they can do. She has had to sleep in the recliner since February.
- 7) Ms. ██████ noted that the recording on the PAS states "When it comes to transferring, client notes her husband would lift her up and transfer her to her chair. She also notes he has to lift her into and out of the car. Her homemaker has to push and tug her she cannot lift the client." At that time, they would call Mr. _____ to come home from work because the homemaker could not transfer her by herself. She had already injured her left arm pulling on her. Mr. _____ would have to come home even at that time and help transfer her. As far as the homemaker is concerned, it was taking two people to transfer the claimant at that time. At the time of the assessment, the claimant was not on medication for shortness of breath (dyspnea). She shortly went back into the hospital and is on continuous oxygen.
- 8) The claimant was assessed as a level 2 for bathing - physical assistance. Testimony from Ms. ██████ revealed that the claimant stated she did need assistance to get in and out of the tub. She also noted there are some things she can do as far as her bath.
- 9) The claimant was assessed as a level 3 for transferring - one person assistance. Testimony from Ms. ██████ revealed that the claimant reported her husband did transfer her from the bathroom to the tub. He did transfer from the bed to the chair.
- 10) There was no documentation from the physician presented for an additional point under under medical conditions/symptoms for dyspnea and no medication was being prescribed at the time of the assessment.

11) Testimony from Mr. _____ revealed that since his wife's hospitalization in February, his wife's mobility has diminished greatly. The disease has attacked her lungs causing them to harden and she cannot breathe properly. She is on oxygen 24/7. A lot of the things she was able to do at the time of the assessment she is no longer able to do. If he is home, he can take care of the transferring. If the homemaker is there, she calls him home to help with the transferring. Most of the time, it is a double transfer rather than just one. He physically puts her on the commode and holds her there. She is not stable by herself. He comes home to help put her in the tub and sometimes comes home even to put her on the commode. Her muscle weakness has increased. She has to slump over the table to eat.

12) Testimony from Ms. [REDACTED] revealed that the claimant has gotten weaker. She now brushes the claimant's hair and stays with her in the shower.

13) Aged/Disabled Home and Community-Based Services Manual Section 570 (D-1)- Program Eligibility for client:

Applicants for the ADW Program must meet the following criteria to be eligible for the Program:

C. Be approved as medically eligible for NF Level of Care.

14) Aged/Disabled Home and Community-Based Services Manual Section 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.

15) Aged/Disabled Home and Community-Based Services Manual Section 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. Decubitus - Stage 3 or 4 (Item 24 on PAS 2005)

B. Unable to vacate a building- a person is physically unable at all times at Level 3 or higher in walking or mentally incapable of leaving the building at Level 3 or higher in orientation with a diagnosis of dementia, Alzheimer's, or related condition. (Item 25, I and 33, on the PAS 2005).

C. Functional abilities of individual in the home. (Item 25 on the PAS 2005).

- 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 total incontinent- defined as when the recipient has no control of bowel or bladder functions at any time)
- 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 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. 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. (Item 26 on the PAS 2005)

E. The individual is not capable of administering his/her own medications is defined as an individual not capable of administering his/her own medications if the prescription medication must be placed in the recipient's hand, mouth, tube or eye by someone other than the recipient at all times.

16) 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 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 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

Levels of Care Service Limits:

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 18 to 25 points to qualify as requiring a Level C in care, which is 124 hours per month in homemaker services. 10 to 17 points indicates a Level B which is for 93 hours per month in homemaker services. The evaluating nurse assigned 16 points, which falls within the Level B of care.
- 2) No additional point is awarded under medical conditions/symptoms for dyspnea as there was no diagnosis from the physician or medication prescribed for the medical condition at the time of the assessment.
- 3) No additional point is awarded for bathing as the evidence and testimony does not show the claimant needs total care (Level 3) for bathing.
- 4) The claimant was assessed as a Level 3 for transferring. The evidence and testimony convinced the State Hearing Officer that the claimant needs two person assistance for transferring. This is Level 4 and equates to two points. This makes no change in the point total as a Level 3 (one person assist) equates to two points.
- 5) There is a total of sixteen (16) points assigned to the claimant. Sixteen (16) points is level of care B which equates to 93 service hours per month.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, it is the finding of the State Hearing Officer that the Department has correctly determined the claimant's level of care according to the information found on the PAS-2005 form dated January 13, 2006. The Department is upheld in the decision to reduce the number of service hours to 93 under the Aged/Disabled Home and Community-Based Services Waiver Program. The action described in the notification letter dated January 19, 2006 will be taken.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 20th Day of July, 2006.

**Margaret M. Mann
State Hearing Officer**