



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

May 31, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 31, 2007. 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.

Eligibility for the Aged/Disabled Waiver Program is based on current policy and regulations. One of these regulations specifies that for the Aged/Disabled Waiver Program, the number of homemaker service hours is determined based on the 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 WVMI. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual 503.2)

Information submitted at your hearing reveals 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 be 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 Department to decrease your Level of Care under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

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

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

_____,

Claimant,

v.

Action Number: 07-BOR-1016

**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 31, 2007 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 31, 2007 on a timely appeal filed March 28, 2007.

It should be noted that the Claimant's benefits have 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 daughter and Power of Attorney
_____, Case Manager, Coordinating Council for Independent Living
_____, Claimant's daughter-in-law and Homemaker, _____ Committee on Aging
Kay Ikerd, RN, Bureau of Senior Services (participated telephonically)
_____, RN, West Virginia Medical Institute (participated telephonically)

Presiding at the hearing was Pamela L. Hinzman, 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 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 Sections 503.2, 503.2.1 and 503.2.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 503.2, 503.2.1, 503.2.2
- D-2 Pre-Admission Screening (PAS) assessment completed on March 6, 2007
- D-3 Notice of Decision dated March 17, 2007
- D-4 Hearing request

Claimant's Exhibits:

- C-1 Letter from Dr. _____

VII. FINDINGS OF FACT:

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter ADW, was undergoing an annual reevaluation to verify continued medical eligibility.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on March 6, 2007 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 17 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care "B" (17 points)- eligible for three (3) hours per day or 93 hours per month of homemaker services. It should be noted that the Claimant previously qualified

as a Level of Care "C"- eligible for four (4) hours per day or 124 hours per month of homemaker services.

- 3) The Claimant was sent notification on March 17, 2007 (D-3) advising her of the proposed reduction in hours.
- 4) Witnesses for the Claimant contended that additional points should be awarded in the following areas:

Significant arthritis- The Claimant's representatives testified that she suffers from significant arthritis and provided a letter from Dr. [REDACTED] (C-1), who has treated the Claimant since 1998. The letter verifies the presence of osteoarthritis. The Claimant's daughter testified that she had attempted to obtain the letter earlier, however, the information was delayed as the physician had been out of town. The Claimant had reported the presence of arthritis during the assessment, however, no physician documentation was available at that time.

Documentation from Dr. [REDACTED] supports testimony provided by the Claimant's representatives concerning the arthritis diagnosis. Therefore, one (1) additional point is awarded to the Claimant for significant arthritis.

Pain- The Claimant's daughter testified that her mother uses over-the-counter medication for pain. No pain diagnosis was provided to the WVMI nurse at the time of the assessment, however, the nurse documented that the Claimant reported having pain. The letter from Dr. [REDACTED] confirms that the Claimant has pain.

Documentation from Dr. [REDACTED] supports testimony that the Claimant suffers from pain. Therefore, one (1) additional point is awarded to the Claimant for pain.

Dyspnea- The Claimant had reported shortness of breath upon exertion, however, no point was awarded for the condition because the nurse had no diagnosis from a physician at the time of the assessment. Dr. [REDACTED] letter confirms the presence of dyspnea.

One (1) additional point is awarded to the Claimant for dyspnea.

Orientation- The Claimant's representatives also addressed the Claimant's orientation problems, however, that point is moot since the Claimant required only one (1) additional point to be elevated to the next Level of Care.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2.1 and 503.2.2 (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- Medical Conditions/Symptoms- 1 point for each (can have total of 12 points) (must be based on medical evidence presented by appropriate medical professionals)

#24- Decubitis- 1 point

#25- 1 point for b., c., or d.

#26 Functional abilities

- Level 1- 0 points
- Level 2- 1 point for each item a. through i.
- Level 3- 2 points for each item a. through m.; i. (walking) must be equal to or greater than Level 3 before points are given for j. (wheeling)
- Level 4 - 1 point for a., 1 point for e., 1 point for f., 2 points for g. through m.
- #27 Professional and Technical Care Needs- 1 point for continuous oxygen
- #28 Medication Administration- 1 point for b. or c.
- #34- Dementia- 1 point if Alzheimer's or other dementia
- #34- Prognosis- 1 point if terminal

The 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 dictates that an individual's Level of Care for the Aged/Disabled Waiver Program is determined by the number of points the individual obtains on the PAS assessment tool.
- 2) The Claimant received 17 points on a PAS completed by WVMI in March 2007 in conjunction with an annual reevaluation.
- 3) As a result of information presented during the hearing, three (3) additional points are awarded to the Claimant.
- 4) The addition of three (3) points brings the Claimant's total number of points to 20, which is indicative of a Level of Care "C" and renders the Claimant eligible for four (4) hours per day or 124 hours per month of homemaker service hours.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to reduce the Claimant's homemaker service hours 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 31st Day of May, 2007.

**Pamela L. Hinzman
State Hearing Officer**