



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 11, 2007

c/o _____

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 10, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to decrease homemaker hours under the Aged Disabled Waiver, ADW, 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 ADW 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-2000, you meet the criteria for level of care C which equates to 124 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 C under the ADW Program.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Allied Nursing and Community Services
Kay Ikerd, BoSS
[REDACTED] WVM I

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

_____,

Claimant,

v.

Action Number: 07-BOR-1085

**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 July 10, 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 July 10, 2007 on a timely appeal, filed April 2, 2007. It should be noted that this hearing was originally scheduled for June 12, 2007. The hearing was rescheduled for July 10, 2007 as the Claimant moved to another county.

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

_____, Case Manager, Allied Nursing and Community Services

Kay Ikerd, RN, 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 §503, §503.1.1, §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 §503.2., §503.2.1 and §503.2.2
- D-2 Pre-Admission Screening, PAS-2000, completed March 13, 2007
- D-3 Notice of Decision dated March 17, 2007
- D-4 Additional Information submitted 03/16/2007

Claimant's Exhibits:

- C-1 Statement from Dr. _____ of Camden-on-Gauley Medical Center, Inc. dated 03/21/2007
- C-2 Medical Reports from CAMC
- C-3 Medical Reports/Progress Notes from Jackson River Internists, Inc.
- C-4 Medical Reports from Summersville Memorial Hospital
- C-5 Statement from Dr. _____ of Camden-on-Gauley Medical Center, Inc. dated 12/06/2006
- C-6 Newspaper Article

VII. FINDINGS OF FACT:

- 1) The Claimant's birth date is listed as 05/17/1943. She is an active participant in the ADW Program and her eligibility was undergoing a re-evaluation on March 13, 2007.
- 2) A WV Medical Institute nurse, SD, completed a Pre-Admission Screening (PAS-2000) on March 13, 2007 in the Claimant's home with the Claimant, her homemaker and case manager present. The Claimant was living alone in an apartment complex on the second floor at the time of the assessment. 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 D to a level C with twenty (20) points awarded. (Exhibits D-2 & D-3)
- 3) The Claimant's primary diagnoses listed on the referral form were DM II, COPD, HTN, Advanced Arthrosclerosis, Pseudoxanthoma Elasticum, and Legally Blind.
- 4) The March 13, 2007 PAS (Exhibit D-2) assigned this Claimant with twenty (20) points in determining the level of care required. The evaluating nurse assigned seven (7) points in the areas of Medical Conditions/Symptoms (a – angina rest, b – angina exertion, c – dyspnea, h - pain, i – diabetes, k – mental disorder, and l (other) – HTN; and ten (10) points in the area of functional levels. The Claimant was assessed as being physically unable to vacate in the event of an emergency (1 point), needing continuous oxygen under Professional and Technical Care needs (1 point), and being able to administer her medication with prompting/supervision (1 point). The total points assigned were twenty (20) which is Level of Care C. This equates to 124 homemaker hours per month.
- 5) The issues contested in the hearing were in the areas of walking, transferring, eating, bathing, dressing, and grooming (items i, h, a, b, c, and d under #26 functional levels). The Claimant has a hereditary condition called pseudoxanthoma elasticum which is associated with generalized arthrosclerosis and blindness which she has. Testimony from the Claimant revealed she “can't do anything”.
- 6) Information on the PAS-2000 (Exhibit D-2) reveals that the Claimant reported she needed assistance with transferring with the tub, chairs and couch. She was observed transferring from the couch pushing with her arms to raise. Under walking, the Claimant reported needing assistance with her cane when it gets darker. She was observed walking in her home without assistance from objects or her cane. The WVMI nurse did not observe the Claimant use any assistive devices during the visit, she did not use the walls or objects in the home while walking. She was assessed as needing supervised/assistive device for transferring and independent for walking.
- 7) Information on the PAS-2000 (Exhibit D-2) reveals that the Claimant was assessed as needing physical assistance for eating, bathing, dressing and grooming. The documentation on the PAS-2000 supports these findings.
- 8) Aged/Disabled Home and Community-Based Services Manual Section 503 – Member Eligibility and Enrollment Process:

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.

9) Aged/Disabled Home and Community-Based Services Manual Section 503.1.1 –

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.

10) Aged/Disabled Home and Community-Based Services Manual Section 503.2 – 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 2000)
- B. Unable to vacate a building- In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. A) independently and b) With Supervision are not considered deficits. (Item#25 on PAS-2000)
- C. Functional abilities of individual in the home. (Item 25 on the PAS 2000).
 - 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 of (e) bowel and/or (f) bladder)
 - Orientation-- Level 3 or higher (totally disoriented, comatose)
 - Transfer----- Level 3 or higher (one person or two person assistance in the home)
 - Walking----- Level 3 or higher (one person assistance 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 27 on the PAS 2000)

E. The individual is not capable of administering his/her own medications. (#28 on the PAS-2000)

11) Aged/Disabled Home and Community Based Service Manual # 503.2.1 & 503.2.2.:

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 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 1 point Decubitus
- #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 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 for Alzheimer’s or other dementia
- #35 Prognosis – 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 26 to 44 points to qualify as requiring a level D in care, which is 155 hours per month in homemaker services. 18 to 25 points indicates a level C which is for 124 hours per month in homemaker services. The evaluating nurse assigned 20 points, which falls within the Level C of care.
- 2) No additional points are awarded for walking, transferring, eating, bathing, dressing or grooming as there was no clear evidence or testimony given that would change the Department’s determination at the time of the assessment.

- 3) There is a total of twenty (20) points assigned to the Claimant. Twenty (20) points is level of care C which equates to 124 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-2000 form dated March 13, 2007. The Department is upheld in the decision to reduce the number of service hours to 124 under the Aged/Disabled Home and Community-Based Services Waiver Program. The action described in the notification letter dated March 17, 2007 will be taken.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision
Form IG-BR-29

ENTERED this 11th Day of July, 2007.

**Margaret M. Mann
State Hearing Officer**