



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

September 10, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 29, 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-1498

**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 September 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 August 29, 2007 on a timely appeal filed June 4, 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
_____, Case Manager, Coordinating Council for Independent Living
_____, RN, Ultracare
_____, Ultracare
_____, Homemaker, Ultracare
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 April 19, 2007
- D-3 Notice of Decision dated May 7, 2007

Claimant's Exhibits:

- C-1 Diagnoses statement 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) West Virginia Medical Institute (WVMI) nurse _____, who was not present at the hearing, completed a medical assessment (D-2) on April 19, 2007 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant, who is 89 years old, was assigned 15 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care "B" (15 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 May 7, 2007 (D-3) advising her of the proposed reduction in hours.
- 4) Witnesses for the Claimant contended that one (1) additional point should be awarded for each of the following diagnoses, which were obtained from Dr. [REDACTED] (C-3) in July 2007: *angina at rest, angina upon exertion, dyspnea, significant arthritis and dysphagia.*

Witnesses testified that the Claimant has had the conditions for some time, however, the Claimant's physician would not provide her with a complete statement of diagnoses until she made an office visit. The Claimant's representatives testified they could not obtain an office appointment for the Claimant until July 2007. Comments made by the assessing nurse on the PAS indicate that the Claimant reported having arthritis and angina which "come and goes." During the assessment, the Claimant's homemaker reported that the Claimant chokes at times and that the Claimant becomes dizzy and short of breath when going out to the car. The assessing nurse's PAS recordings state that no diagnoses for the conditions were provided at the time of the assessment, but indicated the Ultracare registered nurse would attempt to obtain further diagnoses for the Claimant.

The Department's witnesses contended that the contested diagnoses were not provided to the nurse at the time of the PAS assessment or within sufficient time frames for consideration. They objected to the admission of the diagnoses statement- which the Claimant's witnesses explained was backdated to March 26, 2007- as the statement was not received by the Department until August 2007. The Claimant's witnesses testified that the statement was backdated to March 26, 2007 to show that the diagnoses were present at the time of the Medical Necessity Evaluation Request. The WVMi nurse stated that the additional information should have been submitted within two weeks of the Notice of Decision.

The hearing record remained open at the Department's request so that the WVMi nurse could provide a written directive concerning the acceptance of additional evidence in regard to a proposed reduction in Level of Care. The record remained open until September 8, 2007, however, no additional evidence was received on behalf of the Department.

- 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 was awarded 15 points as the result of a PAS completed by WVMI in April 2007 in conjunction with her annual medical reevaluation.
- 3) As a result of information presented during the hearing, five (5) additional points are awarded to the Claimant based on the physician-verified diagnoses of angina at rest, angina upon exertion, dyspnea, significant arthritis and dysphagia. While official diagnoses were unavailable at the time of the assessment, the conditions were reported by the Claimant and/or her homemaker, and the Claimant's representatives testified they were unable to obtain verification until the Claimant could be seen by her physician. The Notice of Decision addresses no time frames concerning the submission of additional information and no further data was provided by the Department.
- 4) The addition of five (5) 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 10th Day of September, 2007.

**Pamela L. Hinzman
State Hearing Officer**