

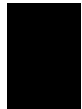


State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

December 12, 2007



Dear Ms. 

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 28, 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 (ADW) 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 your condition at the time of your Pre Admission Screening qualifies for the degree of care and services offered under the Level B of Care under the ADW program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to decrease your Level of Care under the Aged/Disabled Waiver Program from Level C to Level B.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

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


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

█
Claimant,

v.

Action Number: 07-BOR-2112

**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 November 28, 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 November 28, 2007 on a timely appeal filed September 7, 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 Witnesses:

[REDACTED] Claimant
[REDACTED], Homemaker RN, [REDACTED]
[REDACTED], Homemaker, [REDACTED]

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services, BoSS, by speakerphone
[REDACTED], RN, WVMI, by speakerphone

Presiding at the hearing was Sharon K. Yoho, 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 June 20, 2007
- D-3 Eligibility Determination dated June 20, 2007
- D-4 Notice of reduction in benefits dated July 5, 2007

VII. FINDINGS OF FACT:

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter ADW, was undergoing an annual reevaluation to verify continued medical eligibility in June 2007.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a Pre-Admission Screening (PAS) assessment (D-2) on June 20, 2007 and determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse assigned 16 points in her evaluation of the level of care the claimant requires.
- 3) Four points were assigned for Medical Conditions and Symptoms. One point was assessed for a decubitis, one for vacating and ten for functional abilities in the home.

- 4) Witnesses for the Claimant raised issue in the area of pain, which is under Medical Conditions and Symptoms and in the area of wheeling which is under functional abilities in the home.
- 5) The claimant advised the evaluating nurse during the assessment that she had pain in her back. The listing of medications provided for the PAS included Acetaminophen. The claimant is allergic to most narcotics and she therefore takes extra strength Tylenol and antidepressant for the pain she experiences in her back. She also uses a heating pad for her back pain. The nurse testified that she contacted the claimant's doctor's office and had her chart checked to see if there was any diagnosis or prescribed medications noted for pain. She was told that the chart did not include either. The nurse testified to her understanding of a requirement of a prescribed medication or diagnosis in order to assess a point in the area of Medical Conditions and Symptoms.
- 6) The claimant reported to the nurse during the PAS that she wheeled her chair independently. Both the claimant and the homemaker were present during the PAS and neither objected to the nurse noting that the claimant wheeled independently. The nurse observed the claimant wheeling herself at the time of the PAS. The homemaker RN states that she has been at the home and has seen the homemaker wheel the claimant. The homemaker reports that when the claimant has severe pain she cannot wheel herself and that she then pushes the claimant's wheelchair.
- 7) 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)
- #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 16 points on a PAS completed by WVMi in June 2007 in conjunction with an annual reevaluation. For the previous level of care, "C" the claimant would require at least 18 points.
- 3) Evidence and testimony presented during the hearing, did not support that the Claimant experiences back pain and that she takes acetaminophen and antidepressants for this condition. Policy §503.2.1 does not specify a requirement of a prescribed medication or diagnosis for a point to be assessed in this category. The claimant's statement of pain in her back and the noted acetaminophen medication documents the symptom of pain. A point should have been assessed for pain at the time of the PAS.
- 4) Evidence and testimony did not support the claimant's inability to wheel herself. The claimant advised the nurse at the PAS that she could wheel herself and she demonstrated this ability. The testimony of the homemaker RNs observation of the homemaker wheeling the claimant does not prove that this was being done due to the inability of the claimant to wheel herself. Testimony of the homemaker wheeling the claimant when the claimant is in severe pain does not concluded that the claimant would be unable to do this task, but that it may be difficult and painful for her. The evaluating nurse correctly assessed the area of wheeling based on the information provided to her at the PAS.
- 5) The Department should have assessed 17 points in June, with the addition of a point for pain. 17 points is indicative of a Level of Care "B" and renders the Claimant eligible for (93) hours per month of homemaker services.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** 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 12st Day of December 2007.

**Sharon K. Yoho
State Hearing Officer**