



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

April 5, 2007

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 4, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce the homemakers hours due to a Level of Care determination.

In arriving at a decision, the State Hearings 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 and Disabled Waiver Services Program is based on current policy and regulations. Some of these regulations state as follows:

The ADW Program is defined as a long-term care alternative that provides services that enable an individual to remain at or return home rather than receiving nursing facility (NF) care. Specifically, ADW services include Homemaker, Case Management, Consumer-Directed Case Management, Medical Adult Day Care, Transportation, and RN Assessment and Review. (Aged/Disabled Home and Community Based Services Manual § 501 PROGRAM DESCRIPTION).

The information submitted at your hearing revealed: Your homemaker hours will be reduced from a "C" to a "B" level of care.

It is the decision of the State Hearings Officer to UPHOLD the PROPOSAL of the Department to determine your correct Level of Care.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: State Board of Review
Ms. [REDACTED], RN – West Virginia Medical Institute
Ms. Libby Boggess, RN – Bureau of Senior Services
Ms. [REDACTED], Case Manager - CWVAS

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

_____,

Claimant,

v.

Action Number: 07-BOR-520

**West Virginia Department of
Health and Human Resources,**

Respondent,

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on April 5, 2007 for Mr. _____. 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 scheduled for April 4, 2007 on a timely appeal filed January 3, 2007.

It should be noted that the Claimant is receiving benefits based on a "C" level of care. A pre-hearing conference was not held between the parties, and the Claimant did not have legal representation.

II. PROGRAM PURPOSE:

The Program entitled Aged and Disabled Waiver Services 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*
_____, Homemaker RN – Central West Virginia Aging Services, Inc.*
_____, Case Manager – Central West Virginia Aging Services, Inc.
_____, Stepdaughter
_____, Stepdaughter
Libby Boggess, RN – Bureau of Senior Services (BoSS)
_____, RN – West Virginia Medical Institute (WVMI)

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

* Participated by conference call.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is: Should the Claimant’s Level of Care be reduced according to the Pre-Admission Screening (PAS) form dated December 7, 2006?

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual Policy §503.1 MEDICAL ELIGIBILITY; § 503.2.1 LEVELS OF CARE CRITERIA and; § 503.2.2 LEVELS OF CARE SERVICE LIMITS

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department’s Exhibits:

- D-1 Aged/Disabled Home and Community Based Services Manual Policies
- D-2 PAS dated 12/07/06
- D-3 Notice of Decision dated 12/28/06
- D-4 Medical Necessity Evaluation Request dated 11/6/06

Claimants’ Exhibits:

None

VII. FINDINGS OF FACT:

- 1) This issue involves a proposed reduction in homemaker hours due to a Level of Care Determination.

- 2) The Claimant's Physician submitted a Medical Necessity Evaluation Request for additional hours to the West Virginia Medical Institute (WVMI) on November 6, 2006 (Exhibit D-4).
- 3) WVMI is the Quality Improvement Organization under contract with the Bureau for Medical Services, who determines medical eligibility for the Aged and Disabled Waiver Services Program.
- 4) WVMI completed a Pre-Admission Screening Form (PAS) for Aged and Disabled Waiver Services on December 7, 2006 (Exhibit D-2).
- 5) The WVMI RN's assessment indicated the Claimant's homemaker hours should be reduced from a Level "C" (124 hours per month) to a Level "B" (93 hours per month). The assessment of the Claimant's functional levels was based only on the day of the visit.
- 6) WVMI issued a Notice of Decision letter to the Claimant on December 28, 2006 (Exhibit D-3). It stated in part:

You have been determined medically eligible to continue to receive in-home services under the Aged and Disabled Waiver Program. The number of homemaker service hours approved is based on your medical needs, and cannot exceed 93 hours per month.
- 7) The Claimant requested a fair hearing to appeal the proposed reduction in homemaker hours.
- 8) At the hearing, the BoSS RN explained the Level of Care Policy (Exhibit D-1), without questions from the participants.
- 9) The WVMI RN Reviewed the Pre-Admission Screening Form (PAS) assessed on December 7, 2006 (Exhibit D-2). The PAS had a total of fourteen (14) points.
- 10) The persons participating in the assessment on December 7, 2006 were: the Claimant; his Wife; the Homemaker RN; and a Homemaker.
- 11) The areas of dispute were with Question #26 (h) Transferring; and (i) Walking.
- 12) The WVMI RN determined the Claimant was a Level 2 (Supervised/Assistive Device) in Transferring; and Level 2 (Supervised/Assistive Device) in Walking (Exhibit D-2, page 3).
- 13) The WVMI RN reviewed her written comments on the PAS (Exhibit D-2, page 6), in the areas of Walking and Transferring:

Transferring – RN observed Member transfer from lift chair. Member raised the lift chair and then used his wife’s cane to assist him with standing. Member reports he can get in and out of the bed, and on and off from the commode. Member denies needing one person assist with any walking in the apartment.

Walking – RN observed Member walking and he used his wife’s quad cane to assist, and held onto furniture with other hand. Member states he borrows his wife’s cane and holds onto things in the apartment for all walking. Member denies needing one person assist with any walking in the apartment.

14) There was no supporting documentation and/or testimony to award additional points in the areas of Walking and Transferring.

15) Aged/Disabled Home and Community Based Services Manual 503.1 MEDICAL ELIGIBILITY:

A QIO under contract to BMS determines medical eligibility for the ADW Program

16) Aged/Disabled Home and Community Based Services Manual § 503.2.1 LEVELS OF CARE CRITERIA:

There are four levels of care for homemaker services. Points will be determined as follows, 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 Decubitus – 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 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

#35 Prognosis - 1 point if Terminal

Total number of points possible is 44.

17) Aged/Disabled Home and Community Based Services Manual § 503.2.2 LEVELS OF CARE SERVICE LIMITS:

<u>Level</u>	<u>Points Required</u>	<u>Hours Per Day</u>	<u>Hours Per Month</u>
Level A	5-9	2	62
Level B	10-17	3	93
Level C	18-25	4	124
Level D	26-44	5	155

VIII. CONCLUSIONS OF LAW:

- 1) The policy states that homemaker services will be based on four levels of care. Points will be determined according to functional ability.
- 2) The Claimant's record and testimony does not support the assignment of additional points in the areas of Transferring and Walking.

IX. DECISION:

It is the decision of this State Hearing Officer to UPHOLD the PROPOSAL of the Department in this particular matter.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 5th Day of April, 2007.

**Ray B. Woods, Jr., M.L.S.
State Hearing Officer**