



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

April 12, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 5, 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 C of Care under the ADW program.

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 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
CWAS

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

_____,

Claimant,

v.

Action Number: 07-BOR-523

**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 April 5, 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 April 5, 2007 on a timely appeal filed January 8, 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:

_____, Claimant

_____, Claimant's husband (separated)

_____, Claimant's daughter, by speakerphone

_____, Claimant's Homemaker, Central WV Aging Services

_____, Case Manager, Central WV Aging Services

_____, Homemaker RN, Central WV Aging Services

Department's Witnesses:

Jennifer Southerland, Bureau of Senior Services, BoSS, by speakerphone

_____, 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 Waiver Policy Manual Sections 503.2, 503.2.1, 503.2.2 and Chapter 500 Attachment 14

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 November 15, 2006

D-3 Eligibility Determination dated November 15, 2006

D-4 Notice of reduction in benefits dated December 14, 2006

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 November 2006.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on November 15, 2006 and determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse assigned 17 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 point was assessed for vacating in the event of an emergency. Eleven points were assessed in the area of functional abilities in the home.

4) Witnesses for the Claimant raised issues in the following areas:

Medication Administration, The evaluating nurse did not assess a point in this area since the claimant advised her that she was able to open her bottles of medication, take the pills out, and take them herself. The homemaker agrees that the claimant is able to open her bottles, take pills out and put the pills in her mouth without help however; she needs reminders. The claimant has several bottles of pills. Some of her medication needs to be taken twice per day, some daily, some weekly and some as needed. The Homemaker reminds her of what she needs to take during the weekdays and her husband reminds her on the weekends. The claimant is often sleeping due to the affects of Valium and Benadryl she needs to be awakened when it is time for her to take her medication. The claimant testified that she cannot remember when to take her medication and that she depends on reminders from her homemaker and her husband.

Bowel Incontinence, which is under functional abilities: The claimant advised the evaluating nurse that she does have accidents and that she had one accident the previous week. The claimant has paralysis, which makes her unable to identify the need to transfer to the toilet for a bowel movement. She has a catheter and wears Depends for catheter leakage and for bowel movements. The evaluating nurse notes on the PAS, “unable to make it to the bathroom, has the urge all of the time, so she is unaware and has pressure.” The evaluating nurse did assess only one point for her being occasionally incontinent. The claimant’s witnesses report that the claimant is frequently impacted and she requires regular manual disimpaction and the use of stool softeners, laxatives and enemas. The Homemaker testified that the frequency of bowel accidents varies from once or twice per day to three times per week. She reports that the claimant will often ask her to check her depends to see if she has had an accident. The claimant testified that she is unaware of when she needs to have a bowel movement and sometimes is not sure if she has already had a movement in her Depends. She will on occasion try to make it to the toilet, but doesn’t make it there in time.

5) The Homemaker was at the home during the assessment, but was not included in the Completion of the assessment. The evaluating nurse advised during the hearing that she doesn’t usually ask the homemakers questions because she is never sure if the Case Management Agency would want the homemaker to be included in the completion of the assessment.

6) Aged/Disabled 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

7) Aged Disabled Waiver Policy Manual Chapter 500, Attachment 14

f. – Cont./Bowel	Level 1 (Continent)
	Level 2 (Occas. Incontinent* less than 3 per wk.)
	Level 3 (Incontinent)
	Level 4 (Colostomy)

28. Individual is capable of administering his/her own medications (check only one).

a. Yes b. With Prompting/Supervision c. No

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 November 2006 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 support the need for an additional point to be awarded to the Claimant under bowel incontinence, which is in the area of functional abilities. The evaluating nurse assigned only one point for level 2 (occasional incontinence). This was based on the information obtained from the claimant regarding one accident the previous week. The claimant's comment regarding one time last week was not consistent with her further comments to the nurse regarding her inability to make it to the bathroom, her constant feeling of an urge and her inability to be aware. It is clear from testimony given by the claimant and her homemaker that it is a rare incident when this claimant actually makes it to the toilet for bowel movements. She is often impacted and this could possibly explain the reason for the report of only one accident in the previous week. Attachment 14 of the Policy Manual states that 1 point is to be assessed for occasional bowel incontinence of (less than 3 per wk). It is clear from testimony that this

claimant has incontinence in excess of 3 times per week. She therefore should have been assessed at a level 3 and assigned 2 points.

- 4) The claimant should have also received a point for medication administration. The evaluating nurse did not assess a point in this category because the claimant told her that she could take lids off her bottles and take her own medication. Complete information was not gathered in this area during the PAS. Testimony clearly supports that this claimant requires prompting and supervision for accurate medicating. Attachment 14 of the Policy Manual states that prompting and supervision would indicate a level b. Section 502.2.1 provides that a level b. or c. would constitute one point in Medication Administration.
- 5) Had the evaluating nurse gathered complete information from all pertinent persons available at the time of the PAS, this claimant would have been assessed with 19 points and remained in the C level of care.

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 12th Day of April 2007.

Sharon K. Yoho
State Hearing Officer