



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 970
Danville, WV 25053

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

June 21, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 25, 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,

Cheryl McKinney
State Hearing Officer
Member, State Board of Review

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

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

_____,
Claimant,

v. Action Number: 07-BOR-819

**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 25, 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 25, 2007 on a timely appeal filed February 21, 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
- _____, Homemaker, Integrated Resources
- _____, Claimant's mother
- _____, Homemaker RN, MountainHeart

Department's Witnesses:

- Kay Ikerd, Bureau of Senior Services, BoSS, by speakerphone
- _____, RN, WVMI, by speakerphone

Presiding at the hearing was Cheryl McKinney, 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 January 24, 2007
- D-3 Eligibility Determination dated February 16, 2006
- D-3 Notice of reduction in benefits dated February 15, 2007

Claimant's Exhibits:

None

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 January 2007.

- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on January 24, 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) Five (5) points were assessed for Medical Conditions and Symptoms. One (1) point was assessed for vacating in the event of an emergency. Nine (9) points were assessed in the area of functional abilities in the home. One (1) point was assessed for medication administration. A total of sixteen (16) points were assessed during the screening.
- 4) Witnesses for the Claimant raised issues in the following areas:

Transferring and Walking, which are under Functional Levels: The claimant was assessed as level two (2), or Supervised/Assisted Device for each of the categories. The evaluating nurse's notes include the following: " HM says, "She walks on her tippy toes." HM says that if members walker is not within reach, someone has to assist her with transferring. If the walker is in reach, she can transfer holding to the walker. HM says that most of the time member requires one person assistance with ambulation and transferring. She says that 75% of the time, member requires assistance with ambulation and transferring. Because member can transfer and ambulate at times on her own, she was assessed as requiring supervision/assistive device with ambulation and transferring." The claimant's mother testified that the day of the assessment she witnessed the homemaker holding the claimant under the arm while transferring. The homemaker testified she always has to hold on the claimant during transferring and walker. The claimant also testified that she requires hands on assistance with transferring and walking.

- 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 received 16 points on a PAS completed by WVMI in January 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 supports the need for an additional point to be awarded for each of the areas of transferring and walking, for a total of two (2) additional points. The PAS clearly indicates the claimant requires hands on assistance in both these areas 75% of the time. The policy does not stipulate that the need for hands on assistance must be continuous in order for a point to be assessed. The claimant was assessed at level two (2). Evidence and testimony clearly establishes that most of the time the claimant requires hands on assistance which is a level three (3).
- 4) The total amount of points assessed amount to eighteen (18), which will support the finding of Level "C" for this claimant.

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 21st Day of June 2007.

**Cheryl McKinney
State Hearing Officer**