



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

June 5, 2007

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 1, 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
CWWAS

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

_____,
Claimant,

v. **Action Number: 07-BOR-926**

**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 June 5, 2007 for Richard Walsh. 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 June 1, 2007 on a timely appeal filed March 12, 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:

[REDACTED], Claimant's wife
[REDACTED] Case Manager, Central West Virginia Aging Services
Kay Ikerd, RN, Bureau of Senior Services (participated telephonically)
[REDACTED] 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 February 8, 2007
- D-3 Notice of Decision dated March 5, 2007
- D-4 Hearing request

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) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on February 8, 2007 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 16 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care "B" (16 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. During the hearing, the Claimant was awarded one (1) additional point by the Department due to an Alzheimer's disease diagnosis that had not been recorded on the PAS. This brought his total number of points to 17.

- 3) The Claimant was sent notification on March 5, 2007 (D-3) advising him of the proposed reduction in hours.
- 4) Witnesses for the Claimant contended that additional points should be awarded in the following areas:

Incontinence of bladder- Witnesses for the Claimant indicated that he has bladder incontinence and wears Medicaid-approved incontinence products. During the assessment, the Claimant had been determined continent of bladder and occasionally incontinent of bowel. He had stated that he does not have bladder accidents and has a urinal at his bedside.

The Claimant's wife, who was not present during the assessment, testified that he has been occasionally incontinent of bladder since suffering a stroke seven or eight years ago, but his incontinence has become worse over the past few months.

Based on testimony provided during the hearing, one (1) point is awarded for occasional incontinence of bladder as the Claimant's wife testified that he has been occasionally incontinent for several years. In addition, the Claimant's responses to the WVMi nurse are unreliable in light of his Alzheimer's diagnosis.

The Claimant's witnesses also testified that seven more points should be awarded for angina at rest, angina at exertion, seizure disorder, arthritis, pain, contracture and dyspnea. It is moot to address these points since the Claimant has been awarded one (1) additional point for occasional bladder incontinence, which brings him to the next level of care (Level C- 18 to 25 points). Seven additional points would not bring him to a Level of Care "D" (26 to 44 points).

- 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 17 points as the result of a PAS completed by WVMI in February 2007 in conjunction with his annual medical reevaluation.
- 3) As a result of information presented during the hearing, one (1) additional point is awarded to the Claimant.
- 4) The addition of one (1) point brings the Claimant’s total number of points to 18, 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 5th Day of June, 2007.

**Pamela L. Hinzman
State Hearing Officer**