



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 468
Hamlin, WV 25523

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

April 15, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 18, 2009. 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 501)

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 **uphold** the proposal of the Department to decrease your Level of Care under the Aged/Disabled Waiver Program from Level D to Level C.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

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

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

-----,

Claimant,

v.

Action Number: 08-BOR-2577

**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 March 18, 2009 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 March 18, 2009 on a timely appeal filed December 8, 2008.

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 Homemaker RN, Integrated Resources

Department's Witnesses:

Kay Ikerd, BOSS, Department's Representative

Michelle Wiley, WVMI

Presiding at the hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

It should be noted that this hearing was conducted by LEADERPHONE.

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 501

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Aged/Disabled Home and Community-Based Services Manual Section 501

D-2 Pre-Admission Screening (PAS) assessment completed on November 17, 2008

D-3 Notice of Decision letter dated December 2, 2008

D-4 Hearing Request Form

Claimant's Exhibits:

C-1 Fax from Dr. -----, MD dated December 29, 2008

VII. FINDINGS OF FACT:

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter called ADW, was undergoing an annual reevaluation to verify continued medical eligibility in November 2008.

- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (PAS) Pre-Admission Screening form (D-2) on November 17, 2008 and determined that the Claimant continues to meet the medical eligibility criteria.
- 3) Six (6) points were assessed for Medical Conditions and Symptoms. One (1) point was assessed for ability to vacate a building. Eleven (11) points were assessed in the area of functional abilities in the home; specifically: eating, bathing, dressing, grooming, total incontinence of bladder, occasional incontinence of bowel, transferring, and walking. One (1) point was assessed for administering medications, and one (1) point was assessed for a terminal prognosis. A total of twenty (20) points were assessed during the screening and she was assessed as level (C). The Claimant would need six (6) additional points for a total of twenty-six (26) in order to be assessed at level (D).
- 4) The Claimant submitted a letter from her physician (C-1) dated December 29, 2008 which states in pertinent part:

This is a letter of medical necessity for increased hours for home health care for [REDACTED]. She has amyotrophic lateral sclerosis (ALS) followed by me since 2003. This causes significant muscle weakness and she is currently wheelchair-bound. She has significant dyspnea, paralysis, dysphagia, and pain from her disease.

In regards to her functional abilities at home, she requires total assistance with eating, total care with dressing, bathing, and grooming. She is a two person assist for transfers and situational assistance for wheelchair (she has a motorized chair). Her communication is impaired but understandable with aids.

Her disease has progressed significantly and she is physically unable to vacate her home in case of emergency. Although her disease has continued to progress, she is now reaching the terminal stages of ALS at this point. It is unreasonable to think this woman can continue to care for herself without significant assistance in the home.

- 5) Witnesses for the Claimant raised issues in the following areas:

Dressing, which is under Functional Abilities: The Claimant was rated as “level 2”, needing physical assistance with this activity. The WVMI nurse recorded the following on the PAS:

She says that she requires assistance with all aspects of dressing. HM has to assist with this. Was assessed as requiring physical assistance with dressing.

The Claimant stated “one time I may be able to raise my arm and another time I will not.” She stated ninety-five 95% of the time she wears her pajamas. Her Homemaker RN stated that her breathing is getting worse and interferes with this activity. He states he has listed her as “total care” on his care plan. In order to be assessed at a higher level than “physical assistance” the Claimant would need to require “total care”. Since the Claimant can assist in this activity she has been rated correctly.

Medical conditions – paralysis, eating, bathing, wheeling, and grooming: The ratings in these areas were also contested by the Claimant during the hearing; however, they will not be addressed in this decision. The Claimant would need a total of six (6) points in order to be awarded the next level of care – Level D; therefore discussing the remaining five (5) areas becomes a moot point.

- 8) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2.1 and 5-1.3.2.2 (D-1): There are four levels of care for 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

#35- 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

- 9) Aged/Disabled Home and Community Based Waiver Policy Manual Section 501 states in pertinent part:

INITIAL MEDICAL EVALUATION

Following is an outline of the initial medical evaluation process:

E. When the home visit is made, the QIO RN,

through observation and/or interview process, completes the PAS (Attachment 14). The RN will record observations and findings regarding the applicant's level of function in the home. RNs do not render medical diagnoses. In those cases where there is a medical diagnosis question, the QIO RN will attempt to clarify the information with the referring physician. In the event that the RN cannot obtain the information, he/she will document such, noting that supporting documentation from the referring physician was not received.

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 twenty (20) points on a PAS completed by WVMI in November 2008 in conjunction with an annual evaluation, which resulted in a reduction in level of care. For the previous level of care, the Claimant would need at least six (6) additional points for a total of twenty-six (26).
- 3) Evidence and testimony presented during the hearing does not support the need for level (D) care. The Claimant contested six (6) areas during the hearing. In assessing dressing under functional abilities the evidence shows the Claimant is able to assist in this activity and is therefore rated correctly as needed "physical assistance". In order to receive an additional point in this area she would need to require "total care". The evidence does not support this. The remaining five (5) areas were not addressed as it would not have changed the outcome.
- 4) The total amount of points assessed amount to twenty (20), and support the finding of Level "C" for this Claimant.

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 15th Day of April, 2009

**Cheryl Henson
State Hearing Officer**