



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

July 8, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 25, 2008. 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 D 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 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
Mountain Heart Community Services

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

_____,

Claimant,

v.

Action Number: 08-BOR-1122

**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 25, 2008 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 June 25, 2008 on a timely appeal filed March 18, 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 mother
- _____, Homemaker, Integrated Resources
- _____, Case Manager, Mountain Heart Community Services

Department's Witnesses:

Angel Khosa, BOSS, Department's Representative, participating by telephone
Tina Testa, WVMI, participating by telephone

Presiding at the hearing was Cheryl Henson, 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, 503.2.2, and 503.3.1

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 March 3, 2008
- D-3 Chart showing hours utilized monthly

Claimant's Exhibits:

None

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 March 2008.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (PAS) Pre-Admission Screening form (D-2) on March 3, 2008 and determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse indicated the Claimant has homemaker services coming five days per week for 7.5 hours daily, and the homemaker is there 5 hours for the Claimant and 3 hours for her mother. Her mother is also on the Aged/Disabled Waiver program.
- 3) Seven (7) points were assessed for Medical Conditions and Symptoms. One (1) point was assessed for ability to vacate a building. Fifteen (15) points were assessed in the area of functional abilities in the home. One (1) point was assessed for medication administration, and one (1) point was assessed for Alzheimer's or related conditions. A total of twenty-five (25) points were assessed during the screening. The Department also provided evidence to show (D-3) that the Claimant has been utilizing hours consistent with a level "C" of care.
- 4) Witnesses for the Claimant raised issues in the following areas:

Communication, which is under Functional Abilities: The Claimant was rated as impaired/understandable. The WVMI nurse recorded the following on the PAS:

When it comes to her communication client was able to carry on a conversation. She was able to tell me the month, day and date. Speech was impaired and mother states most of the time she is able to understand what the client is saying. I was able to understand the client when I spoke with her.

The witnesses testified that the Claimant is mentally retarded and is "like a five (5) year old". She gets emotional if she has to explain anything more than "simple" information. Most often she is not understandable. Her mother states that she understands most of what she is saying but that is only because she has been with her constantly, and that most people cannot understand her.

Medication Administration, which is under question #28: The Claimant was rated as being able to administer her own medication with prompting/supervision. She was given a point for this issue. The Claimant's witnesses testified that she can't decide which pill to take at what time. The Department added that a change in rating would not allow for additional points to be awarded.

- 6) 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)
- #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 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

- 9) Aged/Disabled Home and Community Based Waiver Policy Manual Section 503.3.1E 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-five (25) points on a PAS completed by WVMI in March 2008 in conjunction with an annual evaluation. For the previous level of care, the Claimant would need at least twenty-six (26) points.

- 3) Evidence and testimony presented during the hearing supports the need for an additional one (1) point to be awarded for communication. Evidence is clear in that the Claimant has problems communicating her thoughts, and is not understandable most of the time as a result.
- 4) The total amount of points assessed amount to twenty-six (26), and support the finding of Level "D" 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 8th Day of July, 2008

**Cheryl Henson
State Hearing Officer**