



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
PO Box 6165
Wheeling, WV 26003

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

September 19, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 11, 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 Program, the number of homemaker service hours is determined based on your 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 WVM. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual 503.2, 503.2.1 and 503.2.2)

Information submitted at your hearing revealed that the evaluating nurse properly assigned you 16 points for your documented medical conditions. Based on 16 points your Level of Care should be a Level "B" rating. As a result, you are eligible to receive three (3) hours per day or 93 hours per month of homemaker services.

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.

Sincerely,

Melissa Hastings
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
WVM
BOSS
_____, POA

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

_____,

Claimant,

v.

Action Number: 08-BOR-1374

**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 September 11, 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 September 11, 2008 on a timely appeal filed June 5, 2008.

It should be noted here that the Claimant's benefits have been 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 Power of Attorney and caregiver

Department's Witnesses

Kay Ikerd, RN - Bureau of Senior Services

Kim Sang, RN – WVMI

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

All parties participated telephonically.

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 Section 500, 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 and 503.2.2

D-2 Pre-Admission Screening (PAS) assessment completed on April 30, 2008

D-3 Medicaid Aged and Disabled Waiver Program Medical Necessity Evaluation Request signed by Dr. [REDACTED] April 7, 2008

D-4 Notice of Decision dated May 6, 2008

Claimant's Exhibits

None

VII. FINDINGS OF FACT:

- 1) Claimant is a 65 year old female. Her Aged/Disabled Waiver program eligibility was undergoing an annual review on April 30, 2008.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (D-2) on April 30, 2008 with claimant, claimant's homemaker/power of attorney and claimant's

husband participating. The evaluating nurse determined that the claimant continues to meet the medical eligibility criteria for the AD/W program.

- 3) The Claimant was assigned 16 points by the evaluating nurse for documented medical conditions that require nursing services. A level of care (LOC) "B" (10-17 points) was assigned to claimant making her 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 LOC "C" (18-25 points) - eligible for four (4) hours per day or 124 hours per month of homemaker services.
- 4) The Claimant was sent notification on May 6, 2008 (D-4) advising her of the proposed reduction in hours.
- 5) Testimony and evidence received during the hearing reveal that the evaluating nurse from West Virginia Medical Institute, Inc. properly evaluated and awarded points to the claimant based on regulations for the Aged/Disabled Waiver program.
- 6) Testimony received from the claimant's homemaker who is also her power of attorney indicates that she does the complete bath for the claimant as the claimant cannot steady herself to wash herself. The power of attorney also indicates that due to the claimant's weight she cannot reach herself to clean herself following a bowel or bladder accident. Testimony received from the power of attorney does indicate that the claimant can wash her hands and face if given the opportunity to do so. The major concern of the homemaker/power of attorney is that the claimant has a problem with what she describes as a yeast infection of her skin as a result of not being able keep herself clean following bowel or bladder accidents. If the claimant's hours of care are reduced the homemaker/power of attorney fears this condition will worsen.
- 7) Testimony received from the claimant's homemaker/power of attorney indicates that the claimant is incontinent of her bowel daily. However when questioned regarding the status of the claimant's bowel incontinence at the time of the evaluation in April, the homemaker/power of attorney confirms that the nurse's evaluation of occasional incontinence was accurate.
- 8) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2, 503.2.1 and 503.2.2 (D-1): There are four levels of care for homemaker services. Points will be determined as follows, 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 III 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 possible 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.
- 2) The Claimant received 16 points based on a properly completed PAS done by a WVMi nurse in April 2008 in conjunction with an annual reevaluation.
- 3) Policy indicates that an evaluation resulting in an award of 16 points on a properly completed PAS will result in an individual being assigned a level of care of 93 hours per month.
- 4) While the issues of bathing and bowel incontinence were raised during this hearing, it is clear that the evaluating nurse properly evaluated these areas at the time of her assessment in April. The claimant's representative was advised of the procedure to follow to request a change in level of care hours as it appears the claimant's condition has changed since the April assessment.

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 18th Day of September, 2008.

**Melissa Hastings
State Hearing Officer**