



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 4, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 31, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to reduce your Homemaker hours due to a Level of Care Determination.

In arriving at a decision, the State Hearings 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 is based on current policy and regulations. Some of these regulations state as follows: The number of homemaker service hours is determined based on the Level of Care. 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).

The information which was submitted at your hearing revealed that there was insufficient evidence to support continued services at Level C care.

It is the decision of the State Hearings Officer to **uphold** the decision of the Department to reduce your homemaker hours from Level C care to Level B care.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

Cc: Erika Young, Chairman, Board of Review
Kay Ikerd, Bureau of Senior Services
[REDACTED] Central WV Aging Services

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

_____,

Claimant,

v.

Action Number: 08-BOR-1408

**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 July 31, 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 July 31, 2008 on a timely appeal, filed May 19, 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
_____, Case Manager, Central WV Aging Services
_____, Case Manager-in-Training, Central WV Aging Services
_____, Homemaker

Brian Holstein, Bureau of Senior Services (appeared by phone)
Christine Miller, RN, West Virginia Medical Institute (appeared by phone)

Presiding at the Hearing was Kristi Logan, 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 Department's decision to reduce Claimant's Homemaker hours is correct.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 503.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 503.2
- D-2 Pre-Admission Screening Form dated April 30, 2008
- D-3 Notification Letter dated May 23, 2008
- D-4 Diagnosis from Dr. _____ dated May 14, 2008

Claimants' Exhibits:

- C-1 None

VII. FINDINGS OF FACT:

1) Claimant had a re-evaluation for the Aged/Disabled Waiver Program and a new Pre-Admission Screening (PAS) form was completed on April 30, 2008 by Christine Miller, RN with the West Virginia Medical Institute (WVMI). Present at the assessment was _____ RN with _____ County Commission on Aging.

2) Claimant was awarded the following deficits as indicated on the PAS (D-2):

Medical Conditions/Symptoms

- Angina at Rest, 1 point
- Angina with Exertion, 1 point
- Dyspnea, 1 point
- Dysphagia, 1 point
- Pain, 1 point
- Diabetes, 1 point
- Mental Disorder

- Other: Chronic DVT of Leg, 1 point

Vacate in Emergency – Physically unable, 1 point

Functional Levels

- Bathing, Physical assistance, 1 point
- Dressing, Physical assistance, 1 point
- Grooming, Physical assistance, 1 point
- Bladder, Incontinent, 2 points
- Transferring, Supervised/assistive device, 1 point
- Walking, Supervised/assistive device, 1 point

Total point value of deficits awarded Claimant on the PAS was 16 points qualifying Claimant for Level B Care of 93 hours a month. Claimant had previously been receiving Level C Care of 124 hours a month.

- 3) Claimant's case manager, Denise Foster, presented Claimant's case for her. Ms. [REDACTED] contested Claimant not receiving points for the significant arthritis under Medical Conditions/Symptoms. As documented on the PAS, Claimant had told Christine Miller, the assessing nurse, that she had the crippling kind of arthritis. Claimant had been given a deficit in arthritis on last year's PAS.
- 4) Ms. [REDACTED] testified that there was no diagnosis on the Evaluation Request Form completed by Claimant's physician, Dr. [REDACTED] (D-2). Two faxes were received from the [REDACTED] County Commission on Aging, one on May 9, 2008 and one on May 21, 2008, with additional information from Dr. [REDACTED]. Neither fax had a diagnosis of arthritis from Dr. [REDACTED] (D-2 and D-4). Claimant was not on any prescription medications for arthritis at the time of the assessment.
- 5) Ms. [REDACTED] felt Claimant should have received points for medication administration. Ms. [REDACTED] stated Claimant needed prompting and supervision regarding medication administration. She also needs reminders to take her medication. Claimant's daughter prepares her pill box for her. Claimant also needs help with drawing up her insulin. If there is no one around to assist her with the insulin, she sometimes will not take it.

Claimant's homemaker, [REDACTED] was not working with the Claimant in April 2008 when the PAS was completed. Ms. [REDACTED] could only testify as to Claimant's need for assistance with medication now. When Claimant was asked if she need help with her medications in April, she answered no. She did say she sometimes needed help now.

- 6) Ms. [REDACTED] argued that Claimant required one-person assistance when transferring at times. Claimant was rated as a Level 2, Supervised/Assistive Device on the PAS. Ms. [REDACTED] testified that Claimant has neuropathy in her feet due to her diabetes. This causes numbness and tingling in her feet making her unable to get up from a sitting position. She will rock back and forth, trying to get up. If someone is present, they will help her get up from a sitting position. If she is alone, she will just sit there until the numbness goes away.

Ms. Miller testified that during the assessment, Claimant was able to get up from a sitting position with the use of her cane. Claimant demonstrated this ability to Ms. Miller several times that day. It is documented that Claimant told Ms. Miller that she does have difficulty getting up and needs to rock because her feet fall asleep. Claimant had been without a homemaker at that time for several months.

- 7) Ms. [REDACTED] stated Claimant has had bowel incontinence for several years. Certain foods cause diarrhea and due to her difficulty in getting up, she has accidents several times a week. Ms. [REDACTED] was unsure why the RN from [REDACTED] County Commission on Aging failed to mention that to Ms. Miller at the assessment.

Ms. Miller stated Claimant had told her that she was able to control her bowels and she was not told otherwise during the assessment. When Claimant was questioned about bowel incontinence, she stated she had been having accidents for about a year but they did not occur every week.

- 8) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2.1 and 503.2.2 states:

There will be four levels of care for clients of Aged/Disabled Waiver (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
- #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

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. The Claimant was awarded 16 points as the result of a PAS completed by WVMi in April 2008 in conjunction with her annual medical evaluation.
- 2) Claimant stated she had arthritis and should have received a deficit in that area. However, no diagnosis of arthritis could be obtained from her treating physician. No points can be awarded in that area.
- 3) Testimony and documentation provided failed to support the claim that Claimant needed assistance with medication administration at the time of the PAS in April 2008. No points can be awarded in that area.
- 4) The documentation provided showed a medical condition of neuropathy which causes Claimant to have numbness in her feet. When Claimant's feet "fall asleep" she is unable to get up from a sitting position. Credible testimony from the case manager showed that Claimant requires one-person assistance in transferring several times a week. Claimant will be awarded an additional point in the area of transferring, making her a Level 3 in this area.
- 5) Claimant denied having bowel incontinence weekly. No additional points can be awarded in this area.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's decision to reduce Claimant's homemaker hours due to a Level of Care Determination. Claimant will be awarded an additional point in transferring, giving her a total of 17 points. The addition of one point qualifies Claimant for Level B Care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision
Form IG-BR-29

ENTERED this 4th Day of August, 2008.

**Kristi Logan
State Hearing Officer**