



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

September 26, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 24, 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 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
Health Consultants Plus

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

_____,

Claimant,

v.

Action Number: 08-BOR-1410

**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 26, 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 24, 2008 on a timely appeal filed May 21, 2008. The hearing was originally scheduled for August 26, 2008, but was rescheduled by the Hearing Officer due to a scheduling conflict.

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
_____, RN, _____ County Senior Center
_____, Home Health Aide, _____ County Senior Center
_____, Aged/Disabled Waiver Program Case Manager, Health Consultants Plus

Participating telephonically

Cecilia Brown, Quality Assurance Program Manager, Bureau of Senior Services
Betsy Carpenter, RN, West Virginia Medical Institute

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 Pre-Admission Screening (PAS) assessment completed on May 12, 2008
- D-2 Aged/Disabled Home and Community-Based Services Manual Sections 503.2, 503.2.1, 503.2.2
- D-3 Notice of Decision dated May 23, 2008
- D-4 Letter from _____ Physical Therapy Services dated May 8, 2008
- D-5 Letter from Dr. _____
- D-6 Medical Necessity Evaluation Request

Claimant's Exhibits:

- C-1 Letter written by _____
- C-2 Letter from _____ Physical Therapy Services dated September 22, 2008

VII. FINDINGS OF FACT:

- 1) The Claimant, a recipient of Aged/Disabled Waiver (ADW) Medicaid benefits, underwent an annual reevaluation to verify continued medical eligibility.
- 2) The West Virginia Medical Institute (WVMI) Nurse completed a medical assessment (D-1) on May 12, 2008 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 14 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care "B" - 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.
- 3) The Claimant was sent notification on May 23, 2008 (D-3) advising him of the proposed reduction in homemaker service hours.
- 4) The ██████████ County Senior Center Nurse- who only recently became the Claimant's case nurse but has known the Claimant since the 1980s- contended that additional points should be awarded in the following areas:

Decubitus- The Senior Center Nurse testified that the Claimant has a long-term pressure ulcer on his right ankle bone which was present at the time of the PAS assessment. She testified that the pressure sore is the result of the Claimant dragging his inner ankle when he transfers.

The WVMI Nurse testified that neither the Claimant nor his previous case manager reported the decubitus on the date of the assessment. The Senior Center Nurse responded that the Claimant did not likely comprehend the question and the case manager has limited medical knowledge.

Based on information presented during the hearing, one (1) additional point is awarded for the medical condition of decubitus.

One-person assistance with transferring- The Claimant was rated as Level 2 (supervised/assistive device) on the PAS in regard to his transferring abilities. The Senior Center Nurse testified that the Claimant requires one-person assistance with transfers at times and that she has personally assisted him with this activity.

The WVMI Nurse testified that the Claimant explained how he transfers independently during the assessment and stated that he asks his mother or homemaker to supervise him when he feels as though he will be unable to transfer.

Exhibit C-2, a September 22, 2008 letter from Physical Therapist ██████████ of ██████████ Physical Therapy Services, states that the Claimant has cerebral palsy which results in poor lower extremity strength and control. The letter states:

Mr. _____ has no functional strength of his legs, he has developed significant flexion contractures and he has experienced intermittent episodes of pain in both lower extremities as well as his spine. Mr. _____ is unable to ambulate at all, even

with braces or assistive devices. His lower extremity and contractures have made it essentially impossible for him to stand or attempt to walk.

The Physical Therapist had also provided a letter dated May 8, 2008 (D-4) which indicates that the Claimant was participating in therapy, had improved considerably and was no longer experiencing back pain. The letter indicates the Claimant's focus was to improve his strength and ability to transfer and that he had made significant progress in those areas.

An undated letter from Dr. [REDACTED] (D-5) states that the Claimant is wheelchair bound and suffers from spasticity in all four limbs, which prevents full use of his arms, hands and legs.

Due to the Claimant's cerebral palsy and lack of functional leg strength, it is reasonable to believe that he would require one-person assistance with transfers at times. Therefore, two (2) additional points are awarded for one-person assistance with transfers (Level 3).

Situational assistance with wheeling- The Senior Center Nurse testified that the Claimant requires situational assistance with wheeling, primarily with entering or exiting buildings and opening doors.

The WVMi Nurse testified that the Claimant could self-propel his motorized wheelchair in the home during the assessment- despite narrow hallways and doorframes- and reported using a manual wheelchair outside of the home. He also turned a door handle during the assessment. Because the Claimant independently manipulated the wheelchair used in his home, he was rated as Level 2 (wheels independently).

As testimony concerning the Claimant's inability to wheel independently primarily concerned areas outside of the home, no additional points can be awarded in this area.

Communication, impaired, not correctable- The Senior Center Nurse presented a letter written by the Claimant (C-1) to provide an example of his poor communication skills. She indicated that the Claimant has mild mental retardation and has problems comprehending information.

The WVMi Nurse testified that the Claimant's communication ability was rated as Level 1 (not impaired) on the PAS because he is able to make his wants and needs known and follow simple commands. The nurse stated that she had no problem understanding the Claimant during the assessment.

While the Claimant may have difficulty comprehending some information, he was able to communicate with the assessing nurse on the date of the PAS, so no points can be awarded for impaired communication.

Medical condition of dyspnea- The Senior Center Nurse testified that the Claimant experiences shortness of breath when he becomes anxious.

The WVMi Nurse testified that the Claimant denied the use of oxygen during the assessment and had no verified diagnosis of dyspnea. The PAS states, however, that the Claimant had reported that he experiences shortness of breath.

As policy does not state that the Claimant must provide a written diagnosis for his medical conditions/symptoms, the Claimant is awarded one (1) point for his reported medical condition of dyspnea.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2.1 and 503.2.2 (D-2): 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- 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 14 points as the result of a PAS completed by WVMi in May 2008 in conjunction with his annual medical evaluation.
- 3) As a result of information presented during the hearing, four (4) additional points are awarded to the Claimant.
- 4) The Claimant's total number of points has been increased to 18, which is indicative of a Level of Care "C" (18 to 25 points).

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 26th Day of September, 2008.

**Pamela L. Hinzman
State Hearing Officer**