



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 17, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 12, 2008. Your hearing request was based on the Department of Health and Human Resources' reduction in homemaker hours under the Aged/Disabled Waiver Program.

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.

The level of care determination 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)

The information that was submitted at your hearing revealed that the Department should have awarded seventeen (17) points instead of sixteen (16) in its May 5, 2008 assessment, but was correct in its determination of your Level of Care.

It is the decision of the State Hearings Officer to **uphold** the action of the Department to reduce homemaker hours under the Aged/Disabled Waiver Program.

Sincerely,

Todd Thornton
State Hearings Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, BoSS
Kathy Gue, WVMI
CCIL, CMA

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

_____,

Claimant,

v.

Action Number: 08-BOR-1438

**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 October 17, 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 12, 2008 on a timely appeal, filed May 27, 2008.

It should be noted that benefits have been continued by the Department.

All persons offering testimony were placed under oath.

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
_____, Home Nurse Consultant, WV Choice
_____, Claimant's Homemaker
Kathy Gue*, RN, WVMI
Kay Ikerd*, Department Representative, BoSS

*Participated by speakerphone

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in its proposal to reduce the Claimant's homemaker hours under the Aged/Disabled Waiver Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 503.2.1; 503.2.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 503.2.1; 503.2.2
- D-2 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services, dated May 5, 2008
- D-3 Notice of Decision dated May 21, 2008

Claimants' Exhibits:

- C-1 Letter from [REDACTED] M.D., F.A.A.F.P., dated June 19, 2008

VII. FINDINGS OF FACT:

- 1) Claimant is a fifty-nine (59) year old female who receives Aged/Disabled Waiver Services and for whom an assessment was completed on May 5, 2008. The Claimant, her husband, and the WVMI nurse were present during the assessment (Exhibit D-2).

- 2) The Department issued a Notice of Decision (Exhibit D-3) to the Claimant on or about May 21, 2008. The notice states, in pertinent part:

“You have been determined medically eligible to continue to receive in-home services under the Aged and Disabled Waiver Program. The number of homemaker service hours approved is based on your medical needs, and cannot exceed 93 hours per month.”

- 3) Testimony from the Department confirmed that the level in the notice (Exhibit D-3) is a reduction from the previous Level of Care “C,” with 124 service hours per month.
- 4) Policy from the Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2.1 and 503.2.2 (Exhibit D-1) state, in pertinent part:

503.2.1 LEVELS OF CARE CRITERIA

There are four levels of care for homemaker services. Points will be determined as follows, based on the following sections of the PAS:

Section	Description of Points
#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 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

Total number of points possible is 44.

All of the above levels of care criteria information also applies to Personal Options.

503.2.1 LEVELS OF CARE SERVICE LIMITS

Level	Points Required	Hours Per Day	Hours Per Month
A	5-9	2	62
B	10-17	3	93
C	18-25	4	124
D	26-44	5	155

- 5) The WVMi nurse assigned sixteen (16) points in her evaluation of the level of care the Claimant requires. Six (6) points were assigned for Medical Conditions and Symptoms, one (1) point for vacating, eight (8) for functional abilities in the home, and one (1) for Professional and Technical Care needs.
- 6) The Claimant's Home Nurse Consultant noted the following areas of dispute in point levels - under the Functional Abilities heading, or #26 on the PAS: *continence of bladder* (#26e), and *administering medication* under #28 on the PAS. On behalf of the Claimant, a letter (Exhibit C-1) from her doctor was presented which also references the Functional Ability of *wheeling* (#26j) and *multi-infarct dementia* (#34).
- 7) With regard to *continence of bladder*, the Claimant's Home Nurse Consultant testified that the Claimant takes medication for this problem, and purchases forty-two (42) to fifty-six (56) adult diapers per month – indicating more than occasional incontinence. The Claimant's Homemaker testified that the Claimant has accidents at least once a day, and sometimes more than that.
- 8) The Homemaker additionally testified that the Claimant and her husband underreported the degree of the *continence of bladder* problem when the PAS was completed, out of fear that the Claimant would be put into a nursing home. The Department contended that the information provided at the time of the PAS in this area was reviewed with both the Claimant and her husband. The WVMi nurse testified that she always advises her members that the assessment being completed is for in-home care, not for nursing home services.
- 9) With regard to *administering medication*, the Department indicated that at the time of the PAS, the Claimant told the WVMi nurse that she takes her medications from a planner when they are due. The Claimant's Home Nurse Consultant testified that when she has asked the Claimant if she took her medications in the past, the Claimant stated that she did not remember. The Home Nurse Consultant noted that the Claimant is frequently disoriented with regard to time and place, does not feel that the Claimant can take her medications safely, and noted that the Claimant's doctor indicated the same

concern in his letter (Exhibit C-1). The WVMI nurse testified that for an additional point in this area, the Claimant would require prompting, supervision, or assistance.

- 10) The letter presented on behalf of the Claimant (Exhibit C-1) was not addressed by the Department directly, except to state that it is their contention that the doctor did not diagnose *multi-infarct dementia*. With reference to this, the letter only states, "It is likely..." The letter also mentions *wheeling*, stating, "...uses a wheelchair at home at times." The letter does not indicate if the Claimant requires a wheelchair, when she started using a wheelchair, and was not mentioned by the Home Nurse Consultant for the Claimant as an area of dispute.

VIII. CONCLUSIONS OF LAW:

- 1) The Department was correct in its assessment of the Claimant's *continence of bladder*. Testimony on behalf of the Claimant is less convincing than the statements of the Claimant and her husband at the time of the PAS. Although testimony also explained that the Claimant's husband might have been confused about the potential for the Claimant to be admitted into a nursing home, the Department's testimony indicated that every effort was made to prevent this confusion.
- 2) The Department should have awarded an additional point in the area of *administering medication*. Testimony and evidence is convincing that the Claimant's memory and orientation problems warrant prompting and supervision in this area.
- 3) Policy dictates that an individual's Level of Care for the Aged/Disabled Waiver Program is determined by the number of points assessed on the PAS assessment tool. The Claimant received sixteen (16) points on a PAS completed by WVMI on May 5, 2008 in conjunction with an annual reevaluation. For the previous Level of Care, "C," the Claimant would require at least eighteen (18) points.
- 4) Evidence and testimony presented during the hearing revealed that the Department should have awarded seventeen (17) points to the Claimant. Because this is still an insufficient amount of points, the Department's proposal to reduce homemaker hours from a Level of Care "C" to a Level of Care "B" is correct.

IX. DECISION:

It is the decision of the State Hearings Officer to **uphold** the action of the Department to Department to reduce homemaker hours under the Aged/Disabled Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of October, 2008.

Todd Thornton
State Hearings Officer