



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

September 8, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 26, 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 B of Care under the ADW program.

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 from Level C to Level B.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
CWVAS

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

_____,
Claimant,

Action Number: 08-BOR-1457

**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 August 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 August 26, 2008 on a timely appeal filed May 30, 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 Homemaker, CWVA
- _____, Claimant's Homemaker RN, CWVA

Department's Witnesses:

Kay Ikerd, BOSS, Department's Representative, participating by telephone
Traci Gillispie, 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 May 12, 2008
- D-3 Notice of Decision dated May 16, 2008
- D-4 Fax from WVMI to Dr. [REDACTED] dated May 12, 2008 with response
- D-5 Report from [REDACTED] Group dated March 12, 2008

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 May 2008.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (PAS) Pre-Admission Screening form (D-2) on May 12, 2008 and determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse documented the Claimant reports "heart problems" and the Case Manager provided a form from April 2007 from the Claimant's same physician documenting a diagnosis of early stages of Alzheimer's dementia.
- 3) Five (5) points were assessed for Medical Conditions and Symptoms. One (1) point was assessed for ability to vacate a building. Ten (10) points were assessed in the area of functional abilities in the home. One (1) point was assessed for medication administration. A total of seventeen (17) points were assessed during the screening.
- 4) Witnesses for the Claimant raised issues in the following areas:

Continuous Oxygen, which is under Professional and Technical Care needs: The Claimant was listed as using oxygen "as needed" and was not assessed a point in this area. The WVMI nurse recorded the following on the PAS:

Has oxygen to use as needed, states she has only used it twice in the last 3 months.

Also included Certificate of Medical Necessity for oxygen, dated 1/29/08, unable to read signature. It documented an oxygen saturation of 86%.

The Claimant's Homemaker RN stated that she should be given a point for continuous oxygen because of her low oxygen saturation. The Department's position is that since the Claimant reported not using the oxygen continuously, in fact only twice in three months time, it would not be appropriate to allow a point for this category.

- 5) ***Dementia***, which is under Question number 34: The Claimant was rated as having no dementia, and was not assessed a point. The WVMI nurse recorded the following pertinent information on the PAS:

Orientation: Member reports having intermittent periods of disorientation. Today she was oriented to persons and place...she had some difficulty with time. She reported the day of the week, the year, but unable to report the month and day....she reported we were in [REDACTED]...she stated (stated) both her neighbor and HMs names...she reported her age and her birthdate....she reported the President is Ford. Her conversation was appropriate.

Alzheimer's or related diagnosis: No dx documented on the referral form. No Rx for meds. [REDACTED] provided the documentation from same referring physician from last year's referral, signed and dated 04/07, that documented member is in the early stages of Alzheimer's. Member denies having Alzheimer's, dementia, or related dx.

The WVMI nurse sent a fax to the Physician's office which stated the following:

Dr. [REDACTED]

I need to obtain further information for [REDACTED] _____ for her yearly evaluation. She reports she has hx or some cardiac problems, however nothing was documented on her referral form. What type of cardiac problems does she have? Also does she have angina? Secondly, she reports she was given oxygen 3 months ago to use as needed. What type of respiratory problems does she have? Lastly, I need to confirm a dx of Alzheimer's – this was reported on last years [sic] assessment but not documented on this years referral form.

It appears someone at the physician's office responded and wrote a comment on the fax itself stating "Can't locate any record of a diagnosis of Alzheimers." It appears that the word "Alzheimers" has a line drawn through it. The physician's signature was not affixed to the document. The physician's office also attached a copy of a report dated March 12, 2008 detailing the findings on a routine checkup for the Claimant. This report does not indicate Alzheimer's or a related condition.

The Department pointed out that this year's physician referral form was marked as not applicable (n/a) by the physician next to the question on the form which says "CHECK IF PATIENT HAS Alzheimer's, Multi-Infarct, Senile Dementia." The Department also provided that confusion in persons can sometimes be related to medication side effects. Their position is that not enough evidence was provided to support awarding a point for Dementia or related condition.

The Claimant's Homemaker testified that she believes the Claimant has dementia. She also stated that she has been accompanying the Claimant to her physician's office for visits since December, and the physician never spends more than five (5) minutes with her each time. She did not have any knowledge of him discussing a dementia type diagnosis with the Claimant at any of the visits.

- 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- 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

- 7) 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 seventeen (17) points on a PAS completed by WVMI in May 2008 in conjunction with an annual evaluation. For the previous level of care, the Claimant would need at least eighteen (18) points.
- 3) Evidence and testimony presented during the hearing does not support the need for additional points to be awarded. Although the Claimant had a low oxygen saturation rate in January 2008, she clearly does not use her oxygen “continuously.” In the area of “Alzheimer’s, multi-farct, senile dementia, or related condition” - evidence is sufficient to show that the Claimant has some intermittent disorientation and confusion at times, however, not enough evidence is present to support that this confusion and disorientation is related to that type of illness.
- 4) The total amount of points assessed amount to seventeen (17), and support the finding of Level “B” for this Claimant.

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 8th Day of September, 2008

**Cheryl Henson
State Hearing Officer**