



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

August 15, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 13, 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 WVM. (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 / [REDACTED]

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

_____,

Claimant,

v.

Action Number: 08-BOR-1458

**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 13, 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 13, 2008 on a timely appeal filed May 30, 2007.

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, participating by telephone
- _____ Claimant's daughter, participating by telephone
- _____ Claimant's Homemaker, participating by telephone
- _____ Claimant's Homemaker RN, CWVAS
- _____ Claimant's Case Manager, CWVAS

Department's Witnesses:

- Kay Ikerd, Bureau for Senior Services, participating by telephone
- Kathy Gue, RN for 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 19, 2008
- D-3 Notice of Denial letter dated May 21, 2008
- D-4 Medical information from Dr. _____ dated April 24, 2008
- D-5 Request for Hearing form

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 19, 2008 and determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse indicated the Claimant lives alone but has someone with her 24/7. She also documented that the claimant has a history of hypertension, arthritis, thyroid and parathyroid surgery, and a slipped disc in her back from twenty years ago. The Claimant has also been diagnosed with Alzheimer's and dementia.
- 3) Four (4) points were assessed for Medical Conditions and Symptoms. One (1) point was assessed for ability to vacate a building. Nine (9) points were assessed in the area of functional abilities in the home. One (1) point was assessed for medication administration, and one (1) point was assessed for Alzheimer's or related conditions. A total of sixteen (16) points were assessed during the screening.
- 4) Witnesses for the Claimant raised issues in the following areas:

Hearing, which is under Functional Abilities: The Claimant was rated as impaired/correctable. The WVMI nurse recorded the following on the PAS:

She has to have people repeat themselves.

The WVMI nurse testified during the hearing that the Claimant gave appropriate answers during the assessment, and when she indicated difficulty hearing her she would compensate by raising her voice. The Claimant's daughter indicated that the Claimant cannot hear. She stated that even when you raise your voice sometimes her mother cannot hear. The Claimant was unable, although it was her intention, to participate in the hearing due to this problem. An attempt was made to include the Claimant in the proceedings; however, she was unable to hear sufficiently and elected to have her daughter represent her for the remainder of the hearing.

- 5) **Bathing**, which is under Functional Abilities: The Claimant was rated as needing physical assistance and assessed one (1) point. The WVMI nurse recorded the following pertinent information on the PAS:

She takes a bath but [sic] sitting on a transfer bench in the tub. She will soap up then pour water over her. Daughter helps her get in and out of the tub and helps her get washed off because she will only wash the same area over.

The Claimant's representatives indicated that the Claimant should have been assessed as "total care" and given two (2) points in this area. They indicated that she can do

very little to help in her bathing. She can only wash one area repeatedly. The WVMI nurse stated that because she can contribute some with her bath she would not be considered “total care”.

- 6) **Dressing**, which is under Functional Abilities: The Claimant was rated as needing physical assistance and assessed one (1) point. The WVMI nurse recorded the following on the PAS:

Daughter says that she has to help her get her clothes on. The member says that she only needs help with [sic] she has to go fast.

The Claimant’s daughter testified that she believes her mother requires “total care” and should have been assessed two (2) points in this area. She states that her mother needs someone to get the clothes for her, and at times needs someone to put clothes on completely. The WVMI nurse testified she did not inquire further during the assessment when the Claimant’s daughter indicated that she has to “help” her mother. She stated that in order to assess “total care” the Claimant would have had to be totally reliant on physical assistance in order to dress, and that if she contributed at all she would be assessed as “needing physical assistance”. She indicated this was the reason she didn’t ask further questions when evaluating this category.

- 7) 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

- 8) 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 sixteen (16) 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 supports the need for an additional one (1) point to be awarded for hearing. The evidence clearly shows the Claimant does not have "correctable" hearing. I find the evidence and testimony presented in the areas of bathing and dressing to be insufficient to warrant awarding additional points in those areas. It is clear that the Claimant participated to a small degree in both dressing and bathing, therefore, the original rating of "needs physical assistance" is appropriate.
- 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 15th Day of August, 2008

**Cheryl Henson
State Hearing Officer**