



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 11, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 9, 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 WVM. (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 "B" rating. As a result, you are eligible to receive three (3) hours per day or 93 hours per month of homemaker services.

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.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVM
Health Consultants Plus

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

_____,

Claimant,

v.

Action Number: 08-BOR-1463

**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 11, 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 9, 2008 on a timely appeal filed May 29, 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 Case Manager, Health Consultants Plus

Participating telephonically

Kay Ikerd, RN, 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 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 Decision dated May 27, 2008
- D-4 Hearing request
- D-5 Additional information from Podiatrist [REDACTED]

Claimant's Exhibits:

- C-1 Letter from Dr. [REDACTED] dated August 1, 2008
- C-2 Letter from _____ dated September 8, 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-2) on May 19, 2008 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 13 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 27, 2008 (D-3) advising her of the proposed reduction in homemaker service hours. The Claimant submitted additional information from Podiatrist [REDACTED] (D-5) and was awarded one (1) additional point for pain, bringing her total points to 14.
- 4) The Claimant's Case Manager contended that additional points should be awarded in the following areas:

Incontinence of bladder and bowel- The Case Manager, who began handling the Claimant's case in July 2008, testified that the Claimant has a history of incontinence. She provided a letter from Dr. [REDACTED] (C-1) dated August 1, 2008 that lists a diagnosis of bowel/bladder incontinence. She also submitted a letter from the Claimant's daughter, _____, in which Ms. _____ indicated that her mother suffers from bowel incontinence.

The WMI Nurse testified that no deficits were awarded for bladder/bowel incontinence as the Claimant stated she is only incontinent of bladder "sometimes, but not real often" and reported no bladder accidents in the week prior to the PAS. The Claimant had also denied having bowel incontinence in the prior week and said she was last incontinent of bowel in April 2008. The Claimant's daughter, homemaker and former case manager were present at the time the PAS was completed and provided no further information about incontinence other than noting that "adult pants" are kept for the Claimant.

As no information was provided concerning the frequency of the Claimant's incontinence, it is uncertain whether the Claimant is totally incontinent (three episodes or more per week) or occasionally incontinent (less than three episodes per week). In addition, the letter from Dr. [REDACTED] was written in August 2008 and it is unclear whether the Claimant was incontinent in May 2008 when the PAS was completed. Therefore, evidence is insufficient to award deficits for bladder/bowel incontinence.

Pseudo dementia- The Claimant's Case Manager testified that Dr. [REDACTED] letter states the Claimant has "pseudo dementia secondary to depression." She questioned whether a deficit could be awarded under PAS Question 34 (conditions of Alzheimer's multi-farct, senile dementia, or related condition).

As no information concerning pseudo dementia was provided at the time the PAS was completed, no additional point can be awarded.

- 5) 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

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 her annual medical evaluation.
- 3) As a result of information presented during the hearing, zero (0) additional points are awarded to the Claimant.
- 4) As the Claimant has been awarded 14 points, her Level of Care has been properly designated by the Department as Level "B" (10 to 17 points).

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 11th Day of September, 2008.

**Pamela L. Hinzman
State Hearing Officer**