



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 25, 2008

Dear Ms. _____:

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 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 "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
WVM
Companion Care Corp.

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

_____,
Claimant,

v.

Action Number: 08-BOR-1670

**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 25, 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 July 1, 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
_____, Claimant's Power of Attorney and caregiver

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 June 19, 2008
- D-3 Notice of Decision dated June 23, 2008
- D-4 Information from Dr. [REDACTED]
- D-5 Hearing request

Claimant's Exhibits:

- C-1 Letter from _____
- C-2 Letters from _____

VII. FINDINGS OF FACT:

- 1) The Claimant, a recipient of Aged/Disabled Waiver (ADW) Medicaid benefits, was undergoing an annual reevaluation to verify continued medical eligibility.
- 2) The West Virginia Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) medical assessment (D-2) on June 19, 2008 and determined that the Claimant continues to

meet the medical eligibility criteria. The Claimant was assigned 15 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 June 23, 2008 (D-3) advising her of the proposed reduction in homemaker service hours.
- 4) The Claimant’s Power of Attorney and caregiver, who was unable to be present when the PAS was completed, contended that additional points should be awarded in the following areas:

Eating, bathing, dressing and grooming-- The Claimant’s caregiver testified concerning the Claimant’s abilities in the four functional areas of eating, bathing, dressing and grooming. The information provided indicates that the Claimant can participate in these activities to a degree, but requires physical assistance.

Because the Claimant can participate in eating, bathing, dressing and grooming to some extent, the PAS ratings of Level 2 (physical assistance) in these four areas is correct and no additional points are awarded.

Total incontinence of bladder- The Claimant’s caregiver testified that the Claimant is incontinent of urine almost daily and this frequency of incontinence was occurring at the time the PAS was completed. She estimated that the Claimant is incontinent of bladder at least five times per week.

The WVMI Nurse testified that, during the assessment, the Claimant had stated that she was incontinent on “Tuesday” and “pretty much that is it in the past week.” She indicated that the Claimant’s homemaker, _____, and her case manager were present during the assessment, but did not provide conflicting information concerning the Claimant’s level of incontinence. The Claimant was rated as Level 2 (occasionally incontinent) on the PAS.

The Claimant’s caregiver testified that the homemaker had not wanted to “coach” the Claimant in regard to her responses. In addition, the PAS was completed on a Thursday and the Claimant had reported she was last incontinent on Tuesday.

The caregiver testified that the Claimant often becomes confused due to the effects of her multiple sclerosis.

Based on information provided during the hearing by the Claimant’s primary caregiver, one (1) additional point is awarded for total incontinence of bladder as testimony reveals that the Claimant is incontinent of bladder more than three times per week.

One-person physical assistance with transferring- The Claimant’s caregiver testified that the Claimant, who is wheelchair bound, requires hands-on assistance most of the time with transfers. She indicated that she walks behind the Claimant when the Claimant tries to reach her walker and that she physically assists the Claimant with transfers from the wheelchair to the commode. She indicated that the Claimant requires hands-on transfers in and out of the shower as the water weakens her.

The WVMI Nurse testified that the Claimant was rated as a Level 2 in transferring (supervised/assistive device) because she had indicated she transfers independently from her wheelchair to her bed, and uses toilet grab bars and her walker for transfers.

Based on information provided by the caregiver and in light of the Claimant's multiple sclerosis diagnosis, it is reasonable to believe that the Claimant requires one-person assistance with some transfers, particularly due to her weakened state when she exits the shower. Therefore, the Claimant is raised to Level 3 (one-person assistance) in transferring and (1) additional point is awarded.

Two-person physical assistance with walking- The caregiver testified that the Claimant requires more than a one-person assist with walking.

The Claimant was rated on the PAS as requiring one-person physical assistance with walking, however, and received two (2) points in this functional area, the maximum number of points available under this category of functionality. Therefore, no additional points are available in this area.

Situational assistance with wheeling- The caregiver testified that the Claimant requires situational assistance with wheeling in the home and that she frequently has to assist the Claimant in maneuvering out of the bathroom. She testified that the Claimant has problems operating her wheelchair inside the apartment as she bumps her toes, elbows and feet and breaks furniture.

The WVMI Nurse testified that the Claimant wheeled independently on the date of the assessment and was rated as Level 2 (independent).

Based on the Claimant's medical condition, it is reasonable to believe that she requires situational assistance with wheeling at times inside her apartment. Therefore, the Claimant is raised to Level 3 in wheeling and two (2) additional points are awarded in this functional area.

Vision, impaired, not correctable- The caregiver testified that the Claimant is legally blind and her vision is not correctable. The Claimant's vision had been rated as Level 2 (impaired, correctable) on the PAS as the WVMI Nurse had determined that the Claimant is able to function in her home despite her vision problems.

The caregiver maintained that the Claimant's poor vision affects every aspect of her home living. She testified that the Claimant runs into furniture and doorways, cannot see to prepare or cut up food, drops beverages when she attempts to place them on flat surfaces, and lacks adequate vision to locate items when she drops them. Exhibit D-4, a letter from Dr. [REDACTED] states that the Claimant has "very poor eye sight secondary to the multiple sclerosis and glaucoma and this is not correctable with lenses."

The WVMI Nurse testified that the Claimant was able to sign a consent form on the date of the assessment after the homemaker placed the Claimant's hand on the correct line. The Claimant was able to read some large print and indicated she could manipulate her home environment "if I do it slow and careful." The Claimant had indicated that she watches television, but listens to books on tape because she cannot see well enough to read.

While the Claimant is not totally blind, the caregiver provided credible examples of how impaired vision adversely affects the Claimant's functionality in the home. In addition, information from the Claimant's physician confirms that her poor eyesight is not correctable with lenses. Therefore, the Claimant's visual functionality is raised to a Level 3 (impaired, not correctable) and two (2) additional points are awarded.

Medical condition of angina- The Claimant's caregiver testified that the Claimant takes metoprolol as she has tachycardia and heart palpitations.

The WVM Nurse testified that the Claimant had reported previous bouts of angina, but indicated that she was no longer experiencing angina at the time the PAS was completed. She indicated that the Claimant had no verified diagnosis of angina and was taking no medication for the condition. The BoSS Nurse testified that the dosage of metoprolol taken by the Claimant would indicate the drug is being used to treat hypertension. She indicated that a higher dosage would be prescribed to treat chest pain.

Information is insufficient to award a point for angina.

- 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) (must be based on medical evidence presented by appropriate medical professionals)
- #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 15 points as the result of a PAS completed by WVMi in June 2008 in conjunction with her annual medical evaluation.
- 3) Six (6) additional points are awarded to the Claimant as a result of testimony presented during the hearing.
- 4) The addition of six (6) points brings the Claimant's total number of points to 21, which is indicative of a Level of Care "C" and renders the Claimant eligible for four (4) hours per day or 124 hours per month of homemaker service hours.

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 25th Day of September, 2008.

**Pamela L. Hinzman
State Hearing Officer**