



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

November 19, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 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 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 501.3)

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
WVMI
CWRAS

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

_____,
Claimant,

v.

Action Number: 08-BOR-1692

**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 November 19, 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 November 13, 2008 on a timely appeal filed July 21, 2008 and received by the Hearing Officer on September 2, 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 daughter-in-law/guardian
_____, Case Manager, Central West Virginia Aging Services
_____, Claimant (observing)

Participating telephonically

Kay Ikerd, RN, Bureau of Senior Services

Melody Lehosit, 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 501.3, 501.3.1.1 and 501.3.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 501.3, 501.3.1.1, 501.3.2 and 501.3.2.1
- D-2 Pre-Admission Screening (PAS) assessment completed on June 16, 2008
- D-3 Notice of Decision dated June 18, 2008
- D-4 Hearing request

Claimant's Exhibits:

- C-1 Diagnoses information from Dr _____

VII. FINDINGS OF FACT:

- 1) The Claimant, a recipient of Aged/Disabled Waiver (ADW) Medicaid benefits who has been diagnosed with paranoid schizophrenia, underwent an annual reevaluation to verify continued medical eligibility.
- 2) The West Virginia Medical Institute (WVMI) Nurse completed a medical assessment (D-2) on June 16, 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 18, 2008 (D-3) advising her of the proposed reduction in homemaker service hours.
- 4) The Claimant's witnesses contended that additional points should be awarded in the following areas:

Diagnoses of dysphagia, significant arthritis, pain and other (skin cancer)- Witnesses for the Claimant provided confirmation from Dr. [REDACTED] dated November 11, 2008 (C-1) which states the Claimant "continues to have a history of skin cancer, dysphagia, arthritis and pain." The Claimant's Case Manager testified that these conditions are ongoing, historical diagnoses which were listed on the Claimant's 2007 PAS. The Case Manager testified that she attempted to obtain the diagnoses information shortly after the PAS was completed, but had difficulty obtaining verification from the physician. She stated that she only recently received the physician's response.

The WVM Nurse testified that verification of the diagnoses was not provided to her during the assessment, so no points had been awarded for the conditions. PAS comments indicate that the nurse informed those present at the assessment - the Claimant and her daughter-in-law/guardian - that a signed physician's statement or prescription verification must be provided for the Claimant's diagnoses. The BoSS Nurse objected to consideration of the diagnoses due to the untimeliness of the physician's statement.

Based on information provided during the hearing, four (4) additional points are awarded to the Claimant for the medical conditions of dysphagia (1 point), significant arthritis (1 point), pain (1 point) and other - skin cancer (1 point). The Claimant's physician has verified these diagnoses and the Claimant's witnesses indicated that the conditions are historical conditions which were present at the time of the assessment. The Claimant's Case Manager provided a credible explanation concerning the problems she encountered in her attempts to obtain written physician documentation of the diagnoses.

Physical assistance with eating- The Case Manager questioned why the Claimant had not been awarded a point for physical assistance with eating when PAS documentation indicates that the Claimant's family cuts her meat. The Claimant's daughter-in-law testified that the Claimant chokes easily and the Case Manager stated that the Claimant would be unable to eat if the meat was not cut up for her.

The WVM Nurse testified that the Claimant demonstrated strong hand grips during the assessment and reported she could feed herself, although her family cuts her meat. The nurse stated that she believes the cutting of meat is part of the food preparation process.

Based on information provided during the hearing, one (1) additional point is awarded for physical assistance with eating.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2.1 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 15 points as the result of a PAS completed by WVMi in June 2008 in conjunction with her annual medical evaluation.
- 3) As a result of information presented during the hearing, five (5) additional points are awarded to the Claimant.
- 4) The addition of five (5) points brings the Claimant's total number of points to 20, 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 19th Day of November, 2008.

**Pamela L. Hinzman
State Hearing Officer**