



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

December 9, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 4, 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
WVMI
CCS

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

_____,

Claimant,

v.

Action Number: 08-BOR-1772

**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 December 9, 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 December 4, 2008 on a timely appeal filed July 10, 2008 and received by the Hearing Officer on August 7, 2008. The hearing was originally scheduled for September 30, 2008 and subsequently for November 13, 2008, but was rescheduled on both occasions at the request of the Department.

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 (observing)

_____, Claimant's daughter and Homemaker, Catholic Community Services

██████████ Case Manager, Catholic Community Services

██████████ RN, Catholic Community Services

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 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 29, 2008

D-3 Notice of Decision dated May 30, 2008

D-4 Fair Hearing Request

Claimant's Exhibits:

C-1 Letter from Dr. ██████████ dated November 18, 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 Pre-Admission Screening (PAS) medical assessment (D-2) on May 29, 2008 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 14 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 30, 2008 (D-3) advising him of the proposed reduction in homemaker service hours.
- 4) The Claimant’s witnesses contended that additional points should be awarded in the following areas:

Physical assistance with eating- The Claimant’s witnesses testified that the Claimant’s daughter/homemaker cuts up his meat and feeds him at times. The daughter testified that she cuts the meat because the Claimant chokes on food and said the Claimant would not eat at times without being fed by others.

The Claimant, who suffers from Alzheimer’s disease, had been rated as “self/prompting” on the PAS in regard to eating. The WVM Nurse testified that the Claimant had received this rating because he demonstrated good hand strength on the date of the assessment. She believes the Claimant’s meat is cut up as a “courtesy.” The PAS states that the daughter/homemaker had reported she “cuts up meat small for him” and that “she puts food in his mouth at times,” however no points were awarded in this area.

As a result of information presented during the hearing, one (1) additional point is awarded for physical assistance with eating. While the Claimant may have demonstrated hand strength sufficient to cut food during the assessment, it is reasonable to believe that he must be fed at times and have his meat cut up due to choking and cognitive deficiencies.

Total care with bathing- The Claimant’s Case Manager contended that the Claimant should be rated as requiring total assistance with bathing. She reported that the Claimant is combative due to his mental condition and refuses to cooperate in the bathing process. The Claimant’s daughter testified that he refuses to wash himself and that other family members have to assist her in bathing the Claimant at times.

The WVM Nurse testified that the Claimant was rated as requiring physical assistance with bathing as he could likely assist in the bathing process if commanded to perform certain tasks. The nurse documented that the Claimant said he bathes himself via sponge bath on the date of the assessment. PAS comments also indicate that the Claimant’s daughter assists him with baths because he refuses to bathe, that the Claimant’s medications had been recently increased, and that he has a history of confusion and combativeness. The Claimant’s daughter/homemaker testified that she did not recall her father stating he takes sponge baths.

Based on information provided the hearing, one (1) additional point is awarded for total care with bathing. Testimony reveals that, while the Claimant may possess the physical ability to bathe, he is combative and refuses to participate in the bathing process due to his Alzheimer’s disease. Therefore, it is unlikely that the Claimant would obey commands to wash himself during a combative episode.

Total care with grooming- The Claimant's witnesses testified that the daughter/homemaker cuts the Claimant's nails, washes his hair and shaves him. They indicated it would be unsafe to allow the Claimant access to a razor.

PAS comments indicate that the Claimant's daughter reported assisting him with cutting his nails and shaving because he is not given sharp objects. The Claimant only reported that he had placed his toupee on his head on the date of the assessment.

Based on information presented during the hearing, one (1) additional point is awarded for total care with grooming. Due to the Claimant's mental status, it is reasonable to believe that he is unable to attend to his grooming needs. In addition, the placement of a toupee is not a clearly defined act of grooming.

Total care with dressing- The Claimant's witnesses testified that he will not put on clothes unless someone else dresses him. They stated that the Claimant has gone outside nude on two occasions, prompting neighbors to call the police. The daughter/homemaker said she must fully dress the Claimant.

The WVMi Nurse testified that the Claimant was rated as requiring physical assistance with dressing as he could button/unbutton his cuff and zip his boot. During the assessment, the Claimant's daughter noted that she "directs him and places the clothes on him."

In light of the Claimant's Alzheimer's disease, it is reasonable to believe that he requires total assistance in dressing at times. Therefore, one (1) additional point is awarded in this area.

One-person physical assistance with transferring- The Claimant's witnesses contended that the daughter/homemaker physically lifts the Claimant's feet to put him in bed. The daughter noted that the Claimant can walk without difficulty on some days, but there are times when he walks unsteadily and she fears he will fall.

The Claimant had been rated as Level 2 in transferring (supervised/assistive device) on the PAS as the WVMi Nurse indicated she observed him hold onto a picnic table when he transferred to a seat.

As the Claimant's daughter physically assists him with transfers into bed and aids him when his is unsteady, one (1) additional point is awarded for one-person assistance with transfers.

One-person physical assistance with walking- The Claimant's daughter testified that she assists her father with walking at times for fear that he will fall. She indicated that his abilities are greater on some days than others.

The WVMi Nurse testified that the Claimant was assessed as independent in ambulation as he walked briskly and steadily on the date of the assessment. The daughter had reported that the Claimant uses a walker; however the nurse did not observe walker use during her visit.

As the Claimant's daughter reported his condition varies on a daily basis, it is reasonable to believe that she physically assists him with walking to prevent falls during the times he is unsteady. Therefore two (2) additional points are awarded for physical assistance with walking.

Communication- The Claimant's Case Manager contended that he should be awarded a point in the area of communication because "he is not in today's world." The Claimant's daughter testified that she often has to watch his face to determine what he is thinking. The Claimant must be prompted to speak and the Catholic Community Services Nurse indicated that the Claimant is often agitated and anxious.

The WVMi Nurse testified that the Claimant spoke clearly and fluently on the date of the assessment. He was alert and oriented to person, however he reported the year as 1977. He knew about the presidential election, was aware that it would be June in a few days, and glanced at his watch for the time. He also knew his age, name and birth date. The nurse stated that communication addresses the Claimant's ability to speak and communicate, and does not concern his level of orientation. The nurse noted that the Claimant was rated as intermittently disoriented on the PAS.

While testimony reveals that the Claimant is often disoriented, he does respond/communicate when prompted. Therefore, no deficit can be awarded for communication.

- 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 14 points as the result of a PAS completed by WVMI in May 2008 in conjunction with his annual medical evaluation.
- 3) Seven (7) additional points are awarded to the Claimant as a result of testimony presented during the hearing.
- 4) The addition of seven (7) 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 9th Day of December, 2008.

**Pamela L. Hinzman
State Hearing Officer**