



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

February 15, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 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 WVMI. (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 "D" rating. As a result, you are eligible to receive five (5) hours per day or 155 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
CWVAS
[REDACTED] Esq., Legal Aid of West Virginia
Mary McQuain, Esq., Office of Attorney General

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

_____,
Claimant,

Action Number: 07-BOR-2028

**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 February 15, 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 February 13, 2008 on a timely appeal filed August 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
_____, Claimant's husband
_____, Homemaker, CARE
_____, Case Manager, Central West Virginia Aging Services
_____, RN, Central West Virginia Aging Services
Lynn Svonavec, Esq., Legal Aid of West Virginia
Mark Toor, Esq., Legal Aid of West Virginia

Participating telephonically

Angel Khosa, Social Worker, Bureau of Senior Services
Kemberly Honaker, RN, West Virginia Medical Institute
Mary McQuain, Esq., Office of Attorney General
Betsy Carpenter, RN, West Virginia Medical Institute (observing)

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 Pre-Admission Screening (PAS) assessment completed on July 20, 2007
- D-2 Informed Consent and Release of Information
- D-3 Notice of Decision dated July 27, 2007
- D-4 Hearing request
- D-5 Hearing/Grievance Record Information (IG-BR-29)
- D-6 PAS-2000 Eligibility Determination
- D-7 Medical Necessity Evaluation Request
- D-8 Assessment appointment letter
- D-9 Aged/Disabled Home and Community-Based Services Manual Sections 503.2, 503.2.1, 503.2.2
- D-10 Information concerning diagnoses

Claimant's Exhibits:

- C-1 Notice of Decision dated July 27, 2007
- C-2 PAS-2000 Eligibility Determination
- C-3 Pre-Admission Screening (PAS) assessment completed on July 20, 2007
- C-4 Aged/Disabled Home and Community-Based Services Manual Sections 503.2, 503.2.1, 503.2.2

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 medical assessment (D-1, C-3) on July 20, 2007 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 24 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care "C" - eligible for four (4) hours per day or 124 hours per month of homemaker services. It should be noted that the Claimant previously qualified as a Level of Care "D"- eligible for five (5) hours per day or 155 hours per month of homemaker services.
- 3) The Claimant was sent notification on July 27, 2007 (D-3, C-1) advising her of the proposed reduction in homemaker service hours.
- 4) The Claimant's representatives contended that additional points should be awarded in the following areas:

Decubitus- The Pre-Admission Screening (PAS) form (D-1, C-3) indicates that the Claimant reported having a diabetic ulcer on her foot at the time of the assessment. The WVMI Nurse admitted that she did not personally observe the sore, but made a determination that it was a diabetic ulcer based on information provided by the Central West Virginia Aging Services Nurse who was present during the assessment. Comments on the PAS state that the Claimant reported that she receives treatment for the ulcer at a wound center. The Claimant testified that she had been hospitalized for treatment of a diabetic ulcer on her foot.

Based on information presented during the hearing, no additional points can be awarded for decubitus as evidence was insufficient to verify the presence of a decubitus ulcer.

Total care with bathing- The Claimant's homemaker testified that she works with the Claimant six hours per day, five days per week. She testified that she gives the Claimant pan baths in her bedroom and that she bathes, rinses and dries the Claimant. She testified that, on a good day, the Claimant can use a wash cloth to wash her hands, however it is difficult for the Claimant to lift her arms. She testified that the Claimant was in pain and began to cry on the date of the assessment when she was asked to demonstrate how she raises her arms. The Claimant testified that the homemaker bathes her, and "if I help at all, it will be to wipe my face after bending forward to where I can reach it."

The WVMi Nurse testified that the Claimant had reported the ability to use her right hand to wash both her face and her left hand on the date of the assessment.

Based on information presented during the hearing, the Claimant is awarded one (1) additional point for total care with bathing. The Claimant's homemaker indicated that "on a good day" the Claimant can wash her hands with a wash cloth. The Claimant indicated that if she assists with the bath "at all" it is only to wipe her face after bending down to reach bathing items. Since it is reasonable to believe that there are days when the Claimant's medical condition prohibits even minimal participation with bathing, total care is an appropriate rating in this area of functionality.

Total care with dressing- The homemaker testified that she gets out the Claimant's clothes, lays the Claimant's pants on the floor, and places the Claimant's legs in her underwear and pants. The Claimant's right arm is weak, so the homemaker places the Claimant's shirts over her head and then puts her right arm into the shirt. The homemaker testified that the Claimant attempts to put her left arm into the shirt, but she cannot do so and the homemaker has to complete this task. The Claimant testified that she leans forward in her wheelchair so that the homemaker can pull her shirt down behind her back. She testified that she raises her arm from her lap and the homemaker then takes her elbow and pushes her arm through the shirt sleeve.

The PAS indicates that the Claimant told the WVMi Nurse that "Sue (the homemaker) dresses me." The Claimant told the nurse that she is unable to raise her legs and feet outward to assist with putting on shoes and socks, and that she is unable to raise her arms to assist with putting on her shirt.

Based on information provided during the hearing, the Claimant is awarded one (1) additional point for total care with dressing as it is clear that she is unable to assist in this process. The Claimant testified that she can raise an arm from her lap, but the homemaker must physically take her elbow and push her arm through the shirt sleeve. The ability to raise one's arm does not constitute participation in the dressing process. If the homemaker did not totally dress the Claimant, it is apparent that the Claimant would be unable to complete any part of this process by herself.

Total care with grooming- The homemaker testified that the Claimant can rinse her mouth and spit out mouthwash if she brings the Claimant the supplies, but that she has to clean up after the Claimant when she is finished. She testified that the Claimant would be unable to retrieve the oral care supplies on her own due to weakness in her limbs. The homemaker testified that the Claimant uses both hands to grasp a glass on the table then bends forward to drink out of a straw.

The Claimant's ability to groom herself is limited to rinsing/spitting and she is only able to accomplish this task because her homemaker brings her the oral care supplies and cleans up when the process is complete. As the Claimant's minimal contribution to her own grooming is totally dependent on the homemaker - and the Claimant is unable to complete any other grooming functions- one (1) additional point is awarded for total care with grooming.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2.1 and 503.2.2 (D-9, C-4): 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 24 points as the result of a PAS completed by WVMi in July 2007 in conjunction with her annual medical evaluation.
- 3) Three (3) additional points are awarded to the Claimant as a result of testimony presented during the hearing.
- 4) The Claimant's total number of points is, therefore, 27, which is indicative of a Level of Care "D" and renders the Claimant eligible for five (5) hours per day or 155 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 15th Day of February, 2008.

**Pamela L. Hinzman
State Hearing Officer**