



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 970
Danville, WV 25053

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

February 25, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 7, 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. These regulations specify that for the Aged/Disabled Waiver (ADW) Program, each applicant/member determined to be medically eligible for ADW services receives an appropriate LOC that reflects current/actual medical condition and short- and long-term needs. There are four levels of care for homemaker services. The QIO RN will record observations and findings regarding the applicant's level of function in the home. Points will be determined, based on sections of the PAS. (Aged/Disabled Home and Community-Based Waiver Policy and Procedures Manual §503.1 and 503.2)

Information submitted at your hearing reveals that your condition at the time of your Pre Admission Screening qualifies for the degree of care and services offered under the Level C of Care under the ADW program.

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 from Level C to Level B.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
Council on Aging

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

_____,
Claimant,

v.

Action Number: 07-BOR-2110

**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 7, 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 7, 2008 on a timely appeal filed September 7, 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's Witnesses:

_____, Claimant
_____, Claimant's Homemaker, Council on Aging
_____, Case Manager, Council on Aging

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services, by speakerphone
Teena Testa, RN, WVMI, by speakerphone

Presiding at the hearing was Cheryl Henson, 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, 503.2.2, and 503.3.1

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 August 1, 2007
- D-3 Notice of Decision dated August 7, 2007
- D-4 Copy of Hearing Request Form

Claimant's Exhibits:

- C-1 Letter from Department of Veterans Affairs dated August 12, 1997
- C-2 Fax from Dr. [REDACTED] dated December 14, 2007

VII. FINDINGS OF FACT:

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter ADW, was undergoing an annual reevaluation to verify continued medical eligibility in August 2007.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (PAS) Pre-Admission Screening form (D-2) on August 1, 2007 and determined that the Claimant continues to meet the medical eligibility criteria.
- 3) Four (4) points were assessed for Medical Conditions and Symptoms. One (1) point was assessed for ability to vacate a building. Nine (9) points were assessed in the area of Functional Abilities in the home. One (1) point was assessed for Professional and Technical Care needs. One (1) point was assessed for Medication Administration. A total of sixteen (16) points were assessed during the screening.
- 4) Witnesses for the Claimant raised issues in the following areas:

Arthritis, which is under Medical Conditions and Symptoms,: The Claimant was not given a point for this condition. The WVMI nurse indicated the following on the PAS:

The Client states he does take hydrocodone for arthritis. [REDACTED] to get a diagnosis for arthritis.

The Claimant testified that his physician gives him shots for this condition and pain medication. The Claimant presented a fax (C-1) from his physician dated December 14, 2007 – well after the originally Pre- Admission Screening in August – indicating that she treats the Claimant for arthritis. The Claimant also presented as evidence a letter (C-2) from the Department of Veterans Affairs dated August 12, 1997 indicating their records reflect that the Claimant is physically and medically disabled permanently and totally with the need for Aid and Attendance of another person. The WVMI nurse testified that she asked the Case Manager to obtain a diagnosis from the physician for the arthritis in order to consider it for a point.

Wheeling, which is under Functional Levels: The Claimant was listed as “no wheelchair”. The WVMI nurse indicated the following on the PAS:

When it comes to using a wheelchair client states he does not use a wheelchair very much in the home. He notes he tries to use his cane. He notes if he goes to the doctor [REDACTED] would take his electric wheelchair.

The Claimant testified that he does use his wheelchair in the home. The Case Manager testified that to her recollection he has always used the wheelchair in the home. The WVMI nurse indicated that she did not question the Claimant further about how often he used the wheelchair in the home.

Transferring, which is under Functional Levels: The Claimant was rated as needing supervised/assistive device. The WVMI nurse recorded the following on the PAS:

When it comes to transferring client states he sleeps in a regular bed. Client notes he does sleep on his couch a lot. Client states he is able to get himself in and out of his bed and on and off his couch. Client states he is able to get himself up and down from his commode.

The Claimant's homemaker testified that she helps him to transfer by placing her arms under his arms and assists him in the transfer. The Claimant stated that he does need help with this function and indicates that "if he has to he can" transfer on his own.

Contractures, which is under Medical Conditions/Symptoms: The Claimant was not given a point for this condition. The WVMI nurse indicated the following on the PAS:

When it comes to contractures client states his legs give him problems but he is able to stretch out his legs. [REDACTED] states his fingers are bent but the client was able to straighten them out.

The Claimant testified that he cannot straighten his left hand fingers and demonstrated this during the hearing. He stated that during the PAS screening he was able to move one finger slightly but not the other. The WVMI nurse did not attempt to obtain a physician's statement.

Dressing, which is under Functional Abilities: The Claimant was rated as needing physical assistance. The Claimant agreed during the hearing that he does help somewhat in this area with some movement.

Bathing, which is under Functional Abilities: The Claimant was rated as needing physical assistance. The Claimant agreed during the hearing that he does help somewhat in this area with some movement.

Vertigo, which is under Medical Conditions/Symptoms: Vertigo is considered as "other" in this category and the Claimant was not given a point because he had already received a point for "other". The Department testified that they did not assess a point for Vertigo because only one point can be given for conditions/symptoms that fall into this category.

- 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

- 6) Aged/Disabled Home and Community Based Waiver Policy Manual Section 503.3.1E states in pertinent part:

INITIAL MEDICAL EVALUATION

Following is an outline of the initial medical evaluation process:

E. When the home visit is made, the QIO RN, through observation and/or interview process, completes the PAS (Attachment 14). The RN will record observations and findings regarding the applicant's level of function in the home. RNs do not render medical diagnoses. In those cases where there is a medical diagnosis question, the QIO RN will attempt to clarify the information with the referring physician. In the event that the RN cannot obtain the information, he/she will document such, noting that supporting documentation from the referring physician was not received.

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 received sixteen (16) points on a PAS completed by WVMI in August 2007 in conjunction with an annual evaluation. For the previous level of care, the Claimant would need at least eighteen (18) points.
- 3) Evidence and testimony presented during the hearing support the need for one (1) additional point to be awarded for arthritis; one (1) additional point for contractures; and one (1) additional point for wheeling. The Claimant clearly indicated to the Department during the screening his medical conditions of arthritis and contractures, as well as present evidence supporting his claim. The Department did not contact the physician for a diagnosis. The Claimant also clearly indicated he did use his wheelchair in the home on a limited basis, and the Department failed to obtain more information before arriving at the determination of "no wheelchair".
- 4) The total amount of points assessed amount to nineteen (19), and support the finding of Level "C" for this Claimant.

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 February, 2008

**Cheryl Henson
State Hearing Officer**