



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

December 18, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 9, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to reduce your homemaker hours from Level C care to Level B.

In arriving at a decision, the State Hearings 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. Some of these regulations state as follows: 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 I (Aged/Disabled Services Waiver Policy and Procedures Manual, §501.3).

The information submitted at your hearing revealed that you were correctly evaluated at your August 2008 assessment for Level B care.

It is the decision of the State Hearings Officer to **uphold** the decision of the Department to reduce your homemaker hours to Level B care.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

Cc: Erika H. Young, Chairman, Board of Review
Bureau of Senior Services
West Virginia Medical Institute
Central WV Aging Services

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

_____,

Claimant,

v.

Action Number: 08-BOR-2134

**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 9, 2008 on a timely appeal, filed September 22, 2008.

It should be noted here that the claimant's benefits have been 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
- _____, RN, [REDACTED] Senior Services
- _____, [REDACTED] Senior Services (observing)
- _____, Homemaker

Kay Ikerd, RN, Bureau of Senior Services (by phone)
Courtenay Smith, RN, West Virginia Medical Institute (by phone)

Presiding at the Hearing was Kristi Logan, 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 or not the Department's decision to reduce Claimant's homemaker hours from Level C to Level B is correct.

V. APPLICABLE POLICY:

Aged/Disabled Waiver Policy and Procedures Manual § 501.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Waiver Policy and Procedures Manual § 501.3.2.1 and 501.3.2.2
- D-2 Pre-Admission Screening Form dated August 21, 2008
- D-3 Medical Necessity Evaluation Request Form dated July 14, 2008
- D-4 Notification Letter dated August 28, 2008

Claimants' Exhibits:

- C-1 Diagnosis from Dr. [REDACTED] dated October 2, 2008 and a Diagnosis from Dr. [REDACTED] dated November 2, 2008

VII. FINDINGS OF FACT:

- 1) Claimant was re-evaluated for the Aged/Disabled Waiver program for continued eligibility on August 21, 2008. A Pre-Admission Screening (PAS) form was completed that date by Courtenay Smith, RN, of WVMI. Claimant was awarded a total of 15 points on the PAS (D-1).
- 2) A notification letter dated August 28, 2008 was issued and read in part (D-3):

You have been determined medically eligible to continue to receive in-home services under the Aged and Disabled Waiver program. The number of

homemaker service hours approved is based on your medical needs, and cannot exceed 93 hours per month.

Claimant's homemaker hours were reduced from Level C care of 124 hours a month to Level B, 93 hours a month. In order for Claimant to continue receiving Level C care, three (3) additional points were required.

- 3) _____, RN of _____ Senior Services, testified that Claimant should continue receiving services at Level C care due to three (3) additional diagnoses given to Claimant by her physicians. _____ presented a diagnosis of Type II Diabetes and a diagnosis of Dyspnea with Exertion from Dr. _____ dated October 2, 2008 and diagnoses of Lumbar Nerve Root Compression, Lumbar Scoliosis and Lumbar Disc Degeneration from Dr. _____ dated November 2, 2008 (C-1). These diagnoses were faxed to WVMi for review on December 3, 2008. The Diabetes, Dyspnea and Scoliosis diagnoses would give Claimant the three (3) additional points she needs to continue at Level C care.

_____ testified they had problems obtaining these diagnoses from Claimant's physicians to be submitted to WVMi in a timely manner. They began working on getting them as soon as Claimant was notified of her reduction in homemaker hours. _____ also stated that WVMi was aware that they were working on getting the additional documentation.

Claimant's functional abilities as rated on the PAS were not contested.

- 4) Aged/Disabled Waiver Policy and Procedures Manual § 501.3.2.1 and 501.3.2.2 states points will be awarded as follows:

- #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 - Decubitus- 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 provides that an individual's Level of Care (LOC) for the Aged/Disabled Waiver Program is determined by the number of points awarded on the PAS assessment tool. Claimant was awarded 15 points on the August 2008 PAS.
- 2) Not only were the diagnoses of Diabetes, Dyspnea with Exertion and Scoliosis not listed on the Medical Necessity Evaluation form, Claimant was not taking any type of medications to treat these conditions. The submission of these diagnoses to WVMI for review was untimely, four (4) months after the date of the assessment.
- 3) Claimant was correctly evaluated at her August 2008 PAS for Level B care.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to reduce Claimant's homemaker hours from Level C care to Level B.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 18th Day of December, 2008.

**Kristi Logan
State Hearing Officer**