



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 11, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 30, 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
Personal Options Program

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

Claimant,

v.

Action Number: 07-BOR-2189

**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 January 30, 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 January 30, 2008 on a timely appeal filed September 25, 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
_____, Homemaker, Personal Options Program

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 September 4, 2007
- D-3 Notice of Decision dated September 17, 2007
- D-4 Copy of Hearing Request Form

Claimant's Exhibits:

None

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 September 2007.

- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (PAS) Pre-Admission Screening form (D-2) on September 4, 2007 and determined that the Claimant continues to meet the medical eligibility criteria.
- 3) Five (5) points were assessed for Medical Conditions and Symptoms. One (1) point was assessed for ability to vacate a building. Ten (10) points were assessed in the area of functional abilities in the home. One (1) point was assessed for medication administration. A total of seventeen (17) points were assessed during the screening.
- 4) Witnesses for the Claimant raised issues in the following areas:

Hearing, which is under Functional Levels: The Claimant was listed as having “impaired/correctable” hearing. The WVMI nurse indicated the following on the PAS:

When it comes to his hearing client does not wear any hearing aides. Client states he does have problems with his hearing. Client states he is almost deaf in his left ear.

The Claimant testified that he has a constant roar in his left ear from Menieres Disease, and states it is not correctable. He states he is almost deaf in his left ear. He states that sometimes he has Meniere’s “episodes” as often as 15 times in a month; however, he could not give a clear picture of the length and severity of the episodes. He states he just goes to bed for relief. The Department’s position is that the Meniere’s episodes do not happen often, and we have no documentation to show the length and severity of his disease.

Wheeling, which is under Functional Levels: The Claimant was listed as “wheels independently.” The WVMI nurse indicated the following on the PAS:

When it comes to using his wheelchair client does use his electric wheelchair in the home. Client does use his power chair in the home. Client notes not since they put the big door in he has not gotten tied up in the doorway.

The Claimant testified that he can wheel independently most of the time, but when the Meniere’s Disease is active, he is totally incapacitated, and would not be able to operate his power wheel chair.

Other, which is under Medical Conditions/Symptoms: The Claimant was given one (1) point for Hypertension. The WVMI nurse recorded only the Hypertension on the PAS, indicating that the Claimant is only eligible for one (1) point under “other” so the Meniere’s disease was not listed in this section. Multiple medical conditions under “other” would not increase the point value. The Claimant stated that he should receive another point for the Meniere’s disease in this section.

- 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 seventeen (17) points on a PAS completed by WVMI in September 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 "hearing"; however, sufficient evidence was not presented to allow for points to be awarded in the area of "wheeling". Policy is clear in that only one point can be awarded for "other"; therefore the Claimant is not entitled to another point for his Meniere's disease.
- 4) The total amount of points assessed amount to eighteen (18), 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 11th Day of February, 2008

**Cheryl Henson
State Hearing Officer**