



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 19, 2008

c/o _____

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 8, 2008. Your hearing request was based on the Department of Health and Human Resources' reduction in homemaker hours under the Aged/Disabled Waiver Program.

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.

The level of care determination for the Aged/Disabled Waiver Program is based on current policy and regulations. One of these regulations specifies that for the Aged/Disabled Waiver (ADW) 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)

The information that was submitted at your hearing revealed that the Department was correct to award 25 points in its September 14, 2007 assessment, and correct in its determination of your Level of Care.

It is the decision of the State Hearings Officer to **uphold** the action of the Department to reduce homemaker hours under the Aged/Disabled Waiver Program.

Sincerely,

Todd Thornton
State Hearings Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, BoSS
Michelle Wiley, WVMI
MountainHeart Community Services, CMA

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

_____,

Claimant,

v.

Action Number: 07-BOR-2286

**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 August 19, 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 April 8, 2008 on a timely appeal, filed October 11, 2007.

All persons offering testimony were placed under oath.

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 son
_____ Case Manager, MountainHeart Community Services
Michelle Wiley, RN, WVMI
Kay Ikerd, Department Representative, BoSS

All participants were by speakerphone.

Presiding at the Hearing was Todd Thornton, 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 Department was correct in its proposal to reduce the Claimant's homemaker hours under the Aged/Disabled Waiver 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, and 503.2.2
- D-2 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services, dated September 14, 2007
- D-3 Notice of Decision dated October 23, 2007
- D-4 Medical Necessity Evaluation Request dated August 3, 2007
- D-5 Medical assessment scheduling notice dated September 4, 2007
- D-6 Letter from [REDACTED] MD, dated October 2, 2007
- D-7 PAS-2000 form, page 6 of 6, dated October 11, 2006

Claimants' Exhibits:

- C-1 Alzheimer's disease information packet
- C-2 Plan Of Care form, dated June 13, 2007
- C-3 Client Contact Form, dated June 13, 2007
- C-4 RN Assessment Form, dated June 13, 2007
- C-5 Drug Profile Sheet
- C-6 PAS for Aged/Disabled Waiver Services, dated October 1, 2004
- C-7 Notice of Decision dated October 8, 2004
- C-8 PAS for Aged/Disabled Waiver Services, dated October 18, 2005
- C-9 Notice of Decision dated October 21, 2005

- C-10 PAS for Aged/Disabled Waiver Services, dated October 11, 2006
- C-11 Notice of Decision dated October 27, 2006

VII. FINDINGS OF FACT:

- 1) Claimant is an eighty-two (82) year old female who receives Aged/Disabled Waiver Services and for whom an assessment was completed on September 14, 2007. The Claimant, her sister-in-law, homemaker and the WVMi RN were present during the assessment (Exhibit D-2).
- 2) The Department issued a Notice of Decision (Exhibit D-3) to the Claimant on or about October 23, 2007. The notice states, in pertinent part:

“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 124 hours per month.”

- 3) The PAS-2000 form, page 6 of 6, dated October 11, 2006 (Exhibit D-7) notes that the previous Level of Care was marked “D,” with 155 service hours per month. The October 2007 notice was a reduction in the level of care to 124 service hours per month.
- 4) Policy from the Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2.1 and 503.2.2 (Exhibit D-1) states :

There are four levels of care for homemaker services. Points will be determined as follows, based on the following sections of the PAS:

<u>Section</u>	<u>Description of Points</u>
#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
#35	Prognosis - 1 point if Terminal

Total number of points possible is 44.

All of the above levels of care criteria information also applies to Personal Options.

LEVELS OF CARE SERVICE LIMITS

<u>Level</u>	<u>Points Required</u>	<u>Hours Per Day</u>	<u>HoursPerMonth</u>
A	5-9	2	62
B	10-17	3	93
C	18-25	4	124
D	26-44	5	155

- 5) The WVMi nurse assigned twenty-five (25) points in her evaluation of the level of care the Claimant requires. Nine (9) points were assigned for Medical Conditions and Symptoms, one (1) point for vacating, twelve (12) for functional abilities in the home, one (1) for Medication Administration, one (1) for Alzheimer's disease, and one (1) point for prognosis.
- 6) The Claimant's son noted the following areas of dispute in point levels - all under the Functional Abilities heading, or #26 on the PAS: *eating* (26a), *bathing* (26b), *dressing* (26c), *grooming* (26d), *orientation* (26g), *vision* (26k), and *communication* (26m).
- 7) The WVMi nurse noted that for an additional point in the area of *eating*, the Claimant would require total care with regard to feeding. Comments from the September 14, 2007 PAS (Exhibit D-2) indicate that the Claimant requires physical assistance with eating, but does not require total care.
- 8) The Claimant's son asserted that the Claimant needs to be constantly reminded to eat, but did not demonstrate that she required total care.
- 9) With regard to the functional ability of *bathing*, the WVMi nurse explained that for an additional point to be awarded, the Claimant would have to require total care in this area. Because the comments from the PAS dated September 14, 2007 (Exhibit D-2) note that the homemaker stated the Claimant can wash her face, and that she could lift her arms (her left arm only to shoulder level) to assist anyone bathing her, this area was assessed as requiring physical assistance.
- 10) The Case Manager for the Claimant referred to three prior PAS documents (Exhibits C-6, C-8, and C-10) which indicated that, in past assessments, the Claimant required total care in the area of *bathing*. However, on the day of the assessment on which the Department's action is based, the Claimant was able to lift her arms to assist anyone bathing her to some degree. This observation alone precludes any assessment of total care – or an additional point – in the area of *bathing*.
- 11) The Claimant's son asserted that the Claimant requires total care in the area of *dressing*. Exhibits C-6, C-8, and C-10 indicate that in past assessments the Claimant was awarded total care in the area of *dressing*.

- 12) The WVMI nurse testified that the Claimant was awarded one (1) point in the area of *dressing*, and that for an additional point she would require total care in this area. Comments from the WVMI nurse in the PAS dated September 14, 2007 (Exhibit D-2) cite three different areas where the Claimant can assist - to a very limited extent - with dressing herself (buttoning her shirt, pulling up pants and underpants, and putting on house slippers). The Department was correct to assess this area as requiring physical assistance instead of requiring total care, and was correct in its point determination in this area.
- 13) In the functional ability of *grooming*, the WVMI nurse testified that the Claimant was assessed as requiring physical assistance, but not total care. An assessment of total care would be necessary for an additional point in this area. The WVMI nurse noted two areas from her September 14, 2007 assessment (Exhibit D-2) where the Claimant can offer assistance (applying lotion and rinsing with mouthwash, if set up for her).
- 14) Information from three prior assessments (Exhibits C-6, C-8, and C-10) revealed that the Claimant was assessed as needing total care in the area of *grooming* in the past. However, nothing was introduced to contradict the examples of the Claimant's restricted ability to assist with grooming provided by the Department in the most recent PAS (Exhibit D-2).
- 15) The Department explained that, in the disputed functional area of *orientation*, an additional point would be appropriate only if the Claimant is totally disoriented. The WVMI nurse interviewed the Claimant to evaluate her level of orientation with regard to person, place, and time. The Claimant was aware of her name, and her location, but was disoriented with regard to time. Because the Claimant could not be assessed as totally disoriented, the point level awarded by the Department in this area is correct.
- 16) The Claimant's son testified that the Claimant cannot see "anything over ten feet," and disputed the Department's assessment in the area of *vision*. The WVMI nurse interviewed the Claimant directly in this area, and discovered that the Claimant wears glasses, can see "part of the time" when wearing them, but may need a new prescription. The Department also noted that if the Claimant was blind or legally blind, it would be in the medical record. The Department was correct to assess the Claimant as impaired/correctable in the area of *vision*.
- 17) The Department asserted that, in the area of *communication*, the Claimant was not impaired. The WVMI nurse testified that she had no trouble understanding the Claimant's words as she spoke, that the Claimant's speech was not slurred or garbled, and that the Claimant did not need assistance from any devices to communicate.
- 18) The Claimant's son offered anecdotal evidence that the Claimant has ignored her pain in the past because she did not have the presence of mind to communicate this information to others. The Case Manager for the Claimant also noted that the Claimant confabulates. Further testimony from the Department classified these points as related to *orientation* - not to *communication* - and reiterated that *communication* for purposes of the PAS relates to the physical ability, not to the presence of mind. No additional point is warranted in the functional ability area of *communication*.

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 assessed on the PAS assessment tool. The Claimant received 25 points on a PAS completed by WVMI on September 14, 2007 in conjunction with an annual reevaluation. For the previous Level of Care, "D," the Claimant would require at least 26 points.
- 2) Evidence and testimony presented during the hearing revealed that the Department was correct in awarding 25 points to the Claimant. For all areas in dispute, arguments for a higher point level from the representatives for the Claimant were unconvincing. The Department's proposal to reduce homemaker hours from a Level of Care "D" to a Level of Care "C" is correct.

IX. DECISION:

It is the decision of the State Hearings Officer to **uphold** the action of the Department to Department to reduce homemaker hours under the Aged/Disabled Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of August, 2008.

Todd Thornton
State Hearings Officer