



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

February 1, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 16, 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 (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)

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,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
[REDACTED] Committee on Aging

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

_____, Claimant,

v.

Action Number: 07-BOR-2468

**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 16, 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 16, 2007 on a timely appeal filed November 13, 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 granddaughter

_____ Homemaker RN, _____ Committee on Aging

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services, BoSS, by speakerphone

Billy Jo. Sides, RN, WVMI, by speakerphone

Presiding at the hearing was Sharon K. Yoho, 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

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Waiver Manual Sections 503.2, 503.2.1, 503.2.2 and 503.4
- D-2 Pre-Admission Screening (PAS) assessment completed on October 18, 2007
- D-3 Eligibility Determination dated October 18, 2007
- D-4 Notice of reduction in benefits dated November 1, 2007
- D-5 Letter to Dr. _____ to confirm diagnosis of arthritis and pain
- D-6 Letter from Dr. _____'s office signed by Physician's Assistant.

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 October 2007.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on October 18, 2007 in the Claimant's home with the Claimant's granddaughter present. The evaluating nurse determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse assigned 17 points in her evaluation of the level of care the claimant requires. This falls in the Level B of care.

- 3) Three points were assigned for Medical Conditions and Symptoms. One point was assessed for vacating in the event of an emergency. Eleven points were assessed in the area of functional abilities in the home. One point was assessed for Medication and one point for Dementia/Alzheimer's related diagnosis.
- 4) Witnesses for the Claimant raised issues in the following Medical Conditions/Symptoms areas:

Dyspnea, During the PAS evaluation, the claimant denied experiencing shortness of breath when attempting to ambulate however; there was a diagnosis of Congestive Heart Failure, which is related to Dyspnea. The claimant's granddaughter testified that she sees the condition of shortness of breath all of the time. This Hearing Officer observed the claimant to be short of breath once she walked from the waiting room to the hearing room.

Significant Arthritis & Associated Pain, The claimant advised the evaluating nurse that she did have arthritis with pain. Since a diagnosis of arthritis and pain were not listed on the referral, the evaluating nurse requested information regarding these conditions and symptoms from the claimant's physician. The nurse received a reply from the physician's office, which confirmed the condition of arthritis and the symptom of pain. This reply was signed by the Physician Assistant instead of by the Physician. The evaluating nurse did not accept this as suitable documentation to warrant giving the claimant a point for arthritis or pain. The claimant testified that she has been prescribed medication for her arthritis pain but that she is not able to tolerate it.

- 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 Services Waiver Policy Manual 503.4
 - C. When the home visit is made, the QIO RN, through observation and/or interview process, completes the PAS (Attachment 14). The RNs do not render medical diagnoses.
 - D. 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 17 points on a PAS completed by WVMI in October 2007 in conjunction with an annual reevaluation. For the previous level of care, "C" the claimant would require one additional point.
- 3) Evidence and testimony presented during the hearing, did support that the evaluating nurse should have awarded additional points in the areas of dyspnea, arthritis and pain.
- 4) A diagnosis of CHF provided for the PAS supports the claimant's granddaughter's testimony regarding the claimant's shortness of breath therefore, a point should be assigned for dyspnea.
- 5) Policy does not specify that Medical Conditions/Symptoms must be documented by a Medical Doctor in order to have a point assigned. Policy in §503.4 provides that the nurse does not render medical diagnoses and that if there is a medical diagnosis question, they will attempt to clarify with the referring physician. It goes on to say that, if that information cannot be obtained that the nurse will note that supporting documentation from the physician was not received. The PAS has a section where diagnoses are listed. The section Medical Conditions/Symptoms on the PAS is a separate section with no instructions that identify the necessity of diagnosis or related prescribed medication. This claimant's testimony of the pain that she experiences is documentation enough to justify a point for this symptom. The statement signed by the Physician's assistant additionally supports the claimant's statement of pain. The statement also identifies that this pain is due to a diagnosis of arthritis. A point should have been given for both pain and arthritis.
- 6) This claimant should have been assessed a total number of twenty (20) points, to accurately represent her need for care. Twenty (20) points is indicative of a Level of Care "C" and renders the Claimant eligible for (124) hours per month of homemaker services.

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 1st Day of February 2008.

**Sharon K. Yoho
State Hearing Officer**