



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

May 27, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 25, 2008 continued on May 14, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to decrease your homemaker hours due to a level of care determination.

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 Aged Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who meet all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. (Aged Disabled (HCB) Services Manual 503).

The information which was submitted at your hearing revealed that there was insufficient evidence to support continued services at Level B care.

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

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

Cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, Bureau of Senior Services
[REDACTED] Allied Nursing and Community Services

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

_____,
Claimant,

v.

Action Number: 07-BOR-2622

**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 May 14, 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 May 14, 2008 on a timely appeal, filed December 14, 2007.

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
_____, Claimant's Daughter
[REDACTED] Case Manager, Allied Nursing and Community Services
[REDACTED] Homemaker RN
[REDACTED] Homemaker

Kay Ikerd, Bureau of Senior Services
Teena Testa, RN, West Virginia Medical Institute

All participants testified 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 the Department's decision to reduce Claimant's homemaker hours was correct.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service Manual §500

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community Based Service Manual §503.2
- D-2 Pre-Admission Screening Form dated November 20, 2007
- D-3 Notification Letter dated November 28, 2007
- D-4 Medicaid Aged/Disabled Waiver Medical Necessity Evaluation Request Form dated October 19, 2007

Claimants' Exhibits:

- C-1 Correspondence from [REDACTED] of Allied Nursing and Community Services
- C-2 Correspondence from [REDACTED] RN of Allied Nursing and Community Services
- C-3 Plan of Care dated November 15, 2007

VII. FINDINGS OF FACT:

- 1) Claimant was re-evaluated for the Aged/Disabled Waiver program on November 20, 2007. A new Pre-Admission Screening (PAS) form was completed that date by Teena Testa, an RN with West Virginia Medical Institute (WVMI). Present at the assessment

was Claimant's homemaker, _____ and case manager, _____ (both the homemaker and case manager are no longer with the agency).

Claimant was awarded the following deficits as indicated on the PAS (D-2):

Medical Conditions/Symptoms

- Significant Arthritis – 1 point
- Pain – 1 point
- Hypothyroidism – 1 point

Vacate in Emergency, Physically Unable – 1 point

Functional Levels

- Bathing, Physical Assistance – 1 point
- Dressing, Physical Assistance – 1 point
- Grooming, Physical Assistance – 1 point
- Bladder, Incontinent – 2 points
- Bowel, Incontinent – 2 points
- Transferring, Two Person Assistance, 2 points
- Walking, Two Person Assistance, 2 points

Medication Administration, Prompting/Supervision – 1 point

Total point value of deficits awarded Claimant on the PAS was 16 points qualifying Claimant for Level B Care of 93 hours a month.

- 2) A notification letter dated November 28, 2007 was issued which 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.

- 3) Claimant and her daughter, _____, contested five (5) areas of functional levels: eating, bathing, dressing, grooming and wheeling. Ms. _____ stated her mother gets confused sometimes and felt like her mother did not understand the questions that were asked during the assessment. Ms. _____ testified that her mother has problems with her grip. She has been cutting up her mother's food for her for the past year; she had to purchase special wide silverware and an electric toothbrush to help compensate her inability to grip.

A Hoyer lift is needed to get Claimant into her motorized wheelchair. Ms. _____ stated she operates the controls on the wheelchair for her mother. She dresses her mother totally as the Claimant is unable to even lift her own arms to get a shirt over her head. Ms. _____ combs, brushes and washes her mother's hair, again because she cannot lift her arms to do so herself. She needs someone to get the soap and washcloth ready for her when it comes to bathing.

Claimant testified that she needs help with bathing and cutting up her foods. Once her food is cut up, she can feed herself with the special utensils.

- 4) Teena Testa testified that at the time of the assessment in November 2007, Claimant told her she could cut up her own food and had had a salad the day before which she was able to cut up herself. Ms. Testa tested Claimant's ability to grip and noted Claimant was able to grip the pen when signing the consent forms.

Claimant told Ms. Testa she was able to brush her own teeth, comb her hair but needed assistance with cutting her nails and shampooing her hair. Claimant could wash her face, hands, arms and chest but the homemaker did those things for her.

Ms. Testa stated Claimant was able to lift her arms up and get a shirt over her head but needed assistance with her pants and socks. She was also able to button buttons.

Claimant told Ms. Testa that she could operate her wheelchair herself and that her doorways were wide enough to allow for her wheelchair. Claimant denied getting tied up in the doorways.

Ms. Testa stated Claimant was alert and oriented during the assessment. She knew the date, time and the name of those present at the assessment. She did not give any indication that she did not understand the questions being asked.

Ms. Testa concluded that Claimant's homemaker and case manager at that time were present during the assessment and did not offer contradictory testimony to the answers Claimant gave.

- 5) Ms. _____ stated her mother fractured her ankle in June 2007 when she got caught in a doorway with her wheelchair. She obviously gets confused if her mother failed to mention the incident to Ms. Testa. Since that time, Ms. _____ operates the wheelchair for Claimant so she does not have the opportunity to get caught up in doorways any longer. Ms. _____ stated her mother does not own any clothes with buttons because her mother has problems with buttons. She states her mother does not participate in dressing at all. She lifts her mother's arms up and puts them in the sleeves.

Ms. _____ stated her mother is totally bed ridden. She could not understand why her hours were being cut when Claimant's condition has worsened since being on the Aged/Disabled Waiver program.

- 6) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2.1 and 503.2.2 (D-9, C-4): 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) (must be based on medical evidence presented by appropriate medical professionals)

#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

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 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. The Claimant was awarded 16 points as the result of a PAS completed by WVMI in November 2007 in conjunction with her annual medical evaluation.
- 2) Claimant's testimony that she could feed herself with special utensils once her food had been cut for her supports the functional level of self-prompting (0 points). No additional points can be awarded in the area of eating.
- 3) Testimony indicated Claimant could brush her own teeth and comb her hair. Claimant does need assistance with other areas in grooming such as shampooing and nail care. Since Claimant is able to participate in some of her grooming, the functional level of physical assistance (1 point) is appropriate. No additional points can be awarded.
- 4) Claimant was rated as physical assistance (1 point) in the area of bathing. Claimant was able to wash her face and hands when soap and a washcloth were prepped for her but assistance was needed the rest of her body. No additional points can be awarded as Claimant participates in bathing.
- 5) Contradictory testimony was presented in the areas of dressing and wheeling. Claimant is able to operate the controls on her wheelchair but due to an incident prior to the date of the assessment, Claimant's daughter began wheeling Claimant around. However, since Claimant does have the ability to operate the controls, no additional points can be awarded in wheeling. Claimant's ability to raise her arms and assist in dressing was contested. According to Claimant's Plan of Care dated November 15, 2007 (C-3) which

was only 5 days prior to the assessment Claimant was rated as “Assist” in dressing and not “Total Care”. No additional points can be awarded.

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 27th Day of May, 2008.

**Kristi Logan
State Hearing Officer**