



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

April 9, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 7, 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,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
CWWAS

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

_____,
Claimant,

v. Action Number: 08-BOR-516

**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 March 7, 2008 for [REDACTED]. 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 March 7, 2008 on a timely appeal filed December 23, 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's daughter
[REDACTED] Claimant's homemaker RN
[REDACTED] Claimant's case manager

Department's Witnesses:

Angel Khosa, BOSS, Department's Representative, participating by telephone
Kathy Gue, WVMI, participating by telephone

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 December 17, 2007

Claimant's Exhibits:

- C-1 Information from Dr. _____

VII. FINDINGS OF FACT:

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter called ADW, was undergoing an annual reevaluation to verify continued medical eligibility in December 2007.

- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (PAS) Pre-Admission Screening form (D-2) on December 17, 2007 and determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse indicated the Claimant reports a flesh eating disease necrotizing fasciitis in her left arm in 1995, and her last visit to a physician was two (2) years ago.
- 3) Seven (7) points were assessed for Medical Conditions and Symptoms. One (1) point was assessed for ability to vacate a building. Six (6) points were assessed in the area of functional abilities in the home. One (1) point was assessed for medication administration, and one (1) point was assessed for Alzheimer's or related conditions. A total of sixteen (16) points were assessed during the screening.
- 4) Witnesses for the Claimant raised issues in the following areas:

Eating, which is under Functional Abilities: The Claimant was rated as needing self/prompting. The WVMI nurse recorded that the Claimant denied needing help with eating or cutting up food. The Claimant's daughter testified her mother is too weak to cut up her food and her hands shake. She reports that she cuts up her mother's food and if she forgets to cut it up she will not eat it. The dialysis makes her very weak. She stated her ring fingers are contracted and cannot straighten. Evidence from the Claimant's physician shows she has been a dialysis patient under his care since June 2002, has a history of irritable bowel syndrome, significant arthritis with contractures of her fingers, generalized weakness and impaired functional mobility and self care skills.

- 5) ***Wheeling***, which is under Functional Abilities: The Claimant was rated as wheeling independently. The WVMI nurse recorded that she can wheel herself in the home. The Claimant's case manager testified that the Claimant is extremely weak due to the dialysis, and cannot grip due to the contractures. Her house is small and she cannot do this herself. The floors in the home are uneven.
- 6) ***Bowel Incontinence***, which is under Functional Abilities: The Claimant was rated as continent. The WVMI nurse recorded the following on the PAS:

She denied incontinence of bladder; she says that she only urinates 2-3 times a week. She denies incontinence of bowels.

The Claimant's daughter testified that she has irritable bowel syndrome and there is no in-between for her. She either has diarrhea or constipation. She estimates her mother has incontinence two to three times a week. She states she lives with her mother and she knows this because she helps her to clean up after these accidents. She also does her mother's laundry. She states her mother does not wear Depends, but they keep pads under her at night. States sometimes she has leakage at night.

- 7) ***Contractures***, which is under Medical Conditions: The Claimant was not given a point for this condition. The Claimant's physician submitted documentation (C-1) indicating the Claimant does have contractures. Claimant's representatives also testified as to the contractures.

- 8) 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

- 9) 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 sixteen (16) points on a PAS completed by WVMI in December 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 supports the need for an additional one (1) point to be awarded for contractures, and an additional one (1) point for eating, for a total of two (2) additional points. Evidence is clear in that the Claimant has weakness due to the dialysis, as well as contractures and significant arthritis, which interferes with her ability to cut up her own foods. Evidence from the physician clearly indicates the Claimant has contractures.
- 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 10th Day of April, 2007

**Cheryl Henson
State Hearing Officer**