



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

February 22, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 22, 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 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 you continue to require the degree of care and services necessary to qualify medically for the Aged/Disabled Waiver Program and your documented medical conditions confirm that your Level of Care should be a Level "C" rating. As a result, you are eligible to receive four (4) hours per day or 124 hours per month of homemaker services.

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.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
Companion Care Corporation

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

_____,
Claimant,

v. Action Number: 08-BOR-560

**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 February 22, 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 February 22, 2008 on a timely appeal filed December 7, 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
_____, Claimant's wife
_____, Homemaker, Companion Care Corporation
Kay Ikerd, RN, Bureau of Senior Services (participated telephonically)
Barbara Plum, RN, West Virginia Medical Institute (participated telephonically)

Presiding at the hearing was Pamela L. Hinzman, 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 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, 503.2.2
- D-2 Pre-Admission Screening (PAS) assessment completed on November 6, 2007
- D-3 Notice of Decision dated November 20, 2007
- D-4 Hearing request

VII. FINDINGS OF FACT:

- 1) The Claimant, a recipient of Aged/Disabled Waiver (ADW) Medicaid benefits, was undergoing an annual reevaluation to verify continued medical eligibility.
- 2) The West Virginia Medical Institute (WVMI) Nurse completed a medical assessment (D-2) on November 6, 2007 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 15 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care "B" - eligible for three (3) hours per day or 93 hours per month of homemaker services. It should be noted that the Claimant previously qualified as a Level of Care "C"- eligible for four (4) hours per day or 124 hours per month of homemaker services.

- 3) The Claimant was sent notification on November 20, 2007 (D-3) advising him of the proposed reduction in homemaker service hours.
- 4) Witnesses for the Claimant contended that additional points should be awarded in the following areas:

Medication administration- The Claimant, who has a diagnosis of Friedreich's Ataxia (a degenerative disease which can result in scoliosis of the spine and loss of muscle coordination), was rated as capable of administering his own medications on the PAS assessment. The following comments were recorded on the PAS:

Member states he can take medication out of the bottle and take when needed, states he gets indigestion, heartburn if does not take it and he can not [sic] handle it so he makes sure he takes it.

The Claimant indicated he had been referring to Tums antacid at the time he provided that information. He stated that he is only able to open the Tums bottle because it has a flip top lid. The Claimant's homemaker and wife testified that someone must sort and place the Claimant's regular medications in a pill box for him. The Claimant's wife indicated that she had been hospitalized at the time of the assessment and could not be present to provide information. The homemaker, who began working with the Claimant in August 2007, was present during the assessment, but testified she had been unaware at the time that the Claimant's wife had actually been setting up the medications for him.

Based on information provided during the hearing, the Claimant is awarded one (1) additional point for prompting/supervision (Level 2) in regard to his ability to administer medications.

- 5) The WVM Nurse testified that the Claimant reported several medical conditions/symptoms during the assessment including angina, dyspnea, significant arthritis, dysphagia, pain and depression/anxiety. The nurse made several attempts to obtain documentation of these conditions/symptoms from the Claimant's physician, but received no response from the doctor. The Claimant's wife indicated that the Claimant actually sees the physician's assistant at the doctor's office, which may have resulted in confusion regarding the request for information.

The Claimant had reported to the WVM Nurse that he was having angina "for a while," but did not see a physician. He also stated that his doctor wanted him to take Ultracet for pain, but he will not take the medication, and that he has situational depression/anxiety, but takes no medication for this condition. No additional testimony was provided about medical conditions/symptoms during the hearing, so it is unclear whether angina and pain were continuing problems at the time of the assessment. The extent of the situational depression/anxiety is also unclear.

PAS comments indicate that the Claimant reported experiencing shortness of breath at times upon rest and exertion, and that he has asthma. He also reported during the assessment that he sometimes has difficulty swallowing. ***As these problems are symptomatic of his medical condition- and policy does not specifically require physician diagnoses for these symptoms - one (1) point is awarded for dyspnea and one (1) point is awarded for dysphagia.***

- 6) 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) (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
- #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

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 was awarded 15 points as the result of a PAS completed by WVMi in November 2007 in conjunction with his annual medical evaluation.
- 3) Three (3) additional points are awarded to the Claimant as a result of testimony and documentation provided during the hearing.
- 4) The Claimant's total number of points is, therefore, 18, which is indicative of a Level of Care "C" and renders the Claimant eligible for four (4) hours per day or 124 hours per month of homemaker service hours.

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 22nd Day of February, 2008.

**Pamela L. Hinzman
State Hearing Officer**