



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

July 16, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 15, 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 WVM. (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
CWWAS

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

_____,
Claimant,

v. Action Number: 08-BOR-685

**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 July 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 July 15, 2008 on a timely appeal filed January 18, 2008. The appeal was received by the Hearing Officer on February 26, 2008 and the hearing was originally scheduled for April 15, 2008, however it was rescheduled at the Claimant's request. The hearing was rescheduled for May 20, 2008, but was continued at the Claimant's request. The hearing was then scheduled for June 12, 2008, but was continued at the Department's request.

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 son
- _____, Homemaker, Mountain Cap
- _____, Case Manager, Central West Virginia Aging Services
- ██████████ RN, Mountain Cap

Participating telephonically

- Kay Ikerd, RN, Bureau of Senior Services
- Betsy Carpenter, RN, West Virginia Medical Institute

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 December 3, 2007
- D-3 Notice of Decision dated January 10, 2008
- D-4 Hearing request

VII. FINDINGS OF FACT:

- 1) The Claimant, a recipient of Aged/Disabled Waiver (ADW) Medicaid benefits, underwent an annual reevaluation to verify continued medical eligibility.
- 2) The West Virginia Medical Institute (WVMI) Nurse completed a medical assessment (D-2) on December 3, 2007 and determined that the Claimant continues to meet the medical eligibility

criteria. The Claimant was assigned 14 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.

During the hearing, the Department conceded one (1) additional point for the medical condition “pain.” This additional point brought the Claimant’s total number of points to 15.

- 3) The Claimant was sent notification on January 10, 2008 (D-3) advising her of the proposed reduction in homemaker service hours.
- 4) The Claimant and her witnesses contend that additional points should be awarded in the following areas:

Angina at rest (1 point) and angina at exertion (1 point)- The Mountain Cap Nurse testified that the Claimant, who is 95 years old, has been prescribed diltiazem and has previously been treated at the emergency room for angina.

The WVMi Nurse testified that the Claimant had reported having “a little” angina that “doesn’t amount to anything” during the assessment. She also testified that hypertension- not angina- is the primary reason an individual would be prescribed diltiazem. The Claimant’s doctor did not list angina as a diagnosis.

Based on the Claimant’s reported history of angina and her statement indicating she experiences some degree of angina, two (2) additional points are awarded to the Claimant for angina at rest and angina upon exertion. Policy does not require that a condition/symptom be verified by a physician.

Vision (impaired, not correctable)- The Mountain Cap Nurse testified that the Claimant is totally blind in her right eye and has deteriorating vision in her left eye. She testified that the Claimant’s vision is not correctable.

The WVMi Nurse testified that the Claimant is able to manipulate her environment, so her vision impairment does not affect her functionality in the home. She testified that the Claimant was able to sign a consent form and watch television during the assessment, so her vision was rated as Level 2- impaired, correctable.

As the Level 2 vision rating is “impaired/correctable” and the Level 3 rating is “impaired, not correctable,” it is appropriate to assign the Claimant a Level 3 rating in regard to her vision loss. The Claimant is blind in one eye, therefore, an “impaired/correctable” rating (Level 2) is inaccurate. While the Claimant is not totally blind, it is reasonable to determine that impaired vision affects her functionality in the home. Therefore, two (2) additional points are awarded to the Claimant for impaired, not correctable vision.

Hearing (impaired, not correctable)- The Mountain Cap Nurse testified that the Claimant is deaf in her right ear and has a hearing aide in her left ear. She testified that the Claimant’s hearing ability is extremely limited and that she must sit at the Claimant’s feet to converse with her. The Claimant’s Case Manager testified that she must speak directly into the Claimant’s left ear to

communicate and the Claimant's son testified that his mother cannot discern differences in voices when more than one person is talking.

PAS comments indicate that the Claimant is very hard of hearing, has a hearing aide in her left ear and was able to change the hearing aide batteries independently during the assessment. The Claimant had been rated as having impaired/correctable hearing on the PAS.

As the Level 2 hearing rating is "impaired/ correctable" and the Level 3 rating is "impaired/not correctable," it is appropriate to assign the Claimant a Level 3 rating in regard to her impairment. As the Claimant is deaf in one ear, an "impaired/correctable" rating (Level 2) is inaccurate. While the Claimant is not totally deaf and answered the nurse's questions appropriately during the assessment, it is reasonable to determine that partial deafness affects her functionality in the home. Therefore, the Claimant is awarded two (2) points for impaired, not correctable hearing.

- 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

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 December 2007 in conjunction with her annual medical evaluation.
- 3) As a result of information presented during the hearing, six (6) additional points are awarded to the Claimant based on the conditions of angina at rest (1 point), angina at exertion (1 point), impaired (not correctable) vision (2 points) and impaired (not correctable) hearing (2 points).
- 4) The addition of six (6) points brings the Claimant's total number of points to 21, 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 16th Day of July, 2008.

**Pamela L. Hinzman
State Hearing Officer**