



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

June 11, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 10, 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
[REDACTED] County Senior Center

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

_____,
Claimant,

v. **Action Number: 08-BOR-853**

**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 June 11, 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 June 10, 2008 on a timely appeal filed February 13, 2008. The appeal was received by the Hearing Officer on April 17, 2008.

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 daughter
_____, Claimant's daughter-in-law
_____, Case Manager, [REDACTED] County Senior Center

Participating telephonically

Kay Ikerd, RN, Bureau of Senior Services
Penny Jordan, RN, West Virginia Medical Institute
Courtney Amick, RN, West Virginia Medical Institute (observing)

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 January 29, 2008
- D-3 Hearing Request
- D-4 Notice of Decision dated February 5, 2008

Claimant's Exhibits:

- C-1 Letter from Dr. [REDACTED]

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 January 29, 2008 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 17 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 February 5, 2008 (D-4) 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:

Dysphagia- The Claimant and her witnesses testified that the Claimant experiences dysphagia on a regular basis. The Claimant's food must be cut into small pieces (nearly pureed) to prevent choking and the Claimant must be careful when taking vitamins. In addition, the Claimant has choked on her saliva while talking. It was noted that the Claimant's caretakers have discussed feeding her baby food as a result of the dysphagia.

Notes on the PAS indicate the Claimant's daughter-in-law informed the assessing nurse that the Claimant "gets choked easily, and often chokes on her own saliva. She reports that she has to eat soft foods. Her daughter in law [sic] reports they are careful with what foods they give her and they cut her foods up small enough for her to eat." The nurse testified that she must have a physician's diagnosis in order to award a point for dysphagia. She testified that she telephoned the Claimant's doctor's office to verify the diagnosis, however she spoke with [REDACTED] (who the Claimant's witnesses identified as a receptionist) and that [REDACTED] had no documentation to validate the diagnosis of dysphagia.

Orientation- The Claimant's daughter-in-law testified that the Claimant is oriented as long as she is inside her apartment. The Claimant reported that she experiences confusion at times.

The WVMI Nurse testified that the Claimant was fully oriented during the assessment and no disorientation problems were reported. The Bureau of Senior Services Nurse testified that the PAS only considers the Claimant's ability to function inside the home.

- 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 17 points as the result of a PAS completed by WVMI in January 2008 in conjunction with her annual medical evaluation.
- 3) As a result of information presented at the hearing, one (1) additional point is awarded to the Claimant for dysphagia. While the Department contends that a physician's diagnosis is required to award a point under the medical conditions/symptoms section of the PAS, policy does not state that a physician's diagnosis is required. Policy simply indicates that one (1) point is awarded for each medical condition/symptom and the Claimant can have a total of 12 points under this section of the PAS.

No additional points are awarded for orientation as the Claimant was fully oriented on the date the assessment was completed.

- 4) The addition of one (1) point brings the Claimant's total number of points to 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 11th Day of June, 2008.

**Pamela L. Hinzman
State Hearing Officer**