



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

May 29, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 28, 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
CCIL

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

_____,
Claimant,

v. **Action Number: 08-BOR-910**

**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 29, 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 28, 2008 on a timely appeal filed February 21, 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
_____, Case Manager, Coordinating Council for Independent Living

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 February 6, 2008
- D-3 Notice of Decision dated February 11, 2008 and additional information
- D-4 Notice of Decision dated February 25, 2008

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 February 6, 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 11, 2008 (D-3) advising her of the proposed reduction in homemaker service hours. The Claimant submitted additional information to be considered, however the documentation did not change the Level of Care determination. A second Notice of Decision was sent to the Claimant on February 25, 2008 (D-4).
- 4) The Claimant's Case Manager contended that additional points should be awarded in the following areas:

Physical assistance with eating- The Claimant's Case Manager testified that the Claimant cannot cut up foods and has not done so in the past three years. PAS comments indicate the Claimant had reported that others cut up her food during the assessment.

The WVMi Nurse testified that the Claimant was assessed as having strong grips and had reported cutting her own fingernails and toenails. The Claimant had also reported that she can check her blood sugar via glucometer independently, fasten clothes and manipulate her daily medications. She also signed a consent form without difficulty. The nurse testified that she asked the Claimant why she could not cut up her own food and the Claimant did not respond. As a result of these considerations, the Claimant was denied a point for requiring physical assistance with eating.

The Claimant's Case Manager testified that cutting of food requires a different muscle group than those used in activities assessed by the evaluating nurse. The Case Manager indicated that the Claimant has arthritis and experiences tremors. The Claimant's Homemaker RN had submitted a letter to WVMi after the first Notice of Decision (D-3) was sent. In the letter, the Homemaker RN stated that the Claimant may have strong and equal grips, however, she has decreased dexterity and lacks the fine motor skills needed to hold a knife tight enough to cut up foods. She also wrote that the Claimant does not trim her own nails.

Based on information provided by the Case Manager and Homemaker RN, one (1) additional point is awarded for physical assistance with eating. It is reasonable that the Claimant lacks dexterity to utilize a knife considering her diagnosis of arthritis and her reported tremors.

Hearing, Impaired, Not Correctable- The Claimant had submitted information from Dr. [REDACTED] (D-3) dated February 20, 2008 which indicates that she has deafness in her left ear and her hearing is not correctable. The WVMi Nurse reviewed the information, but determined the impairment should be rated as "impaired, correctable" since the Claimant was able to hear when spoken to on the date of the assessment. She changed the PAS finding from "not impaired" (Level 1) to "impaired, correctable" (Level 2), however no points are awarded for a Level 2 rating. The nurse indicated that the Claimant compensates for her hearing loss in the home and the deafness does not affect her functional ability.

As the Level 3 hearing rating is "impaired/not correctable" and the Level 4 rating is "deafness," it is appropriate to assign the Claimant a Level 3 rating in regard to her impairment. The Claimant's physician has clearly documented that she has uncorrectable deafness in her left ear, therefore, an "impaired/correctable" rating (Level 2) is inaccurate. While the Claimant is not totally deaf and could hear the nurse to answer questions during the assessment, it is reasonable to determine that partial deafness affects her functionality in the home to some extent.

- 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) (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 17 points as the result of a PAS completed by WVMi in February 2008 in conjunction with her annual medical evaluation.
- 3) Two (2) additional points are awarded to the Claimant as a result of testimony presented during the hearing.
- 4) The addition of two (2) points brings the Claimant's total number of points to 19, 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 29th Day of May, 2008.

**Pamela L. Hinzman
State Hearing Officer**