



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

June 13, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 29, 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 for medical conditions and functional levels. 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 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
Allied Nursing and Community Services

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

_____,
Claimant,

v. Action Number: 08-BOR-971

**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 12, 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 29, 2008 on a timely appeal filed March 4, 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's Witnesses:

_____, Claimant
[REDACTED] Allied Nursing, Case Manager
[REDACTED] Allied Nursing, Regional Case Manager

Department's Witnesses:

Kaye Ikerd, BOSS – participated telephonically
Kathy Gue, WVM, RN – participated telephonically

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 February 11, 2008
- D-3 Notification letter dated March 7, 2008
- D-4 Fax to Dr. [REDACTED] dated February 13, 2008
- D-5 Documentation from Kay Ikerd, BOSS dated May 29, 2008

Claimant's Exhibits:

None

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 February 2008.
- 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 recorded the following in the "Health Assessment" section of the PAS:

The member is in agreement with the referral DX. H/O agoraphobia [sic], ischemic heart disease, defibrillator [sic] placement, urinary incontinence [sic] sec. to urethral vesical dysfunction, arthritis, h/o hysterectomy, appendectomy, 2 d&c, auto accident that required surgery on the left hip, knee, elbow, foot and 7 surgery on the left eye. She has a prostatic [sic] eye on the left. No infectious disease reported. Allergies: seasonal allergies, nkda. Last hospitalization was 2006 for diverticulitis. Last physician [sic] visit was Feb. 8, 2008.

- 3) Three (3) points were assessed for Medical Conditions and Symptoms, specifically, dyspnea, mental disorder, and other – hypertension and GERD. One (1) point was assessed for ability to vacate a building. Nine (9) points were assessed in the area of functional abilities in the home. One (1) point was assessed under Professional and Technical needs for "continuous oxygen", and one (1) point was assessed for medication administration. A total of fifteen (15) points were assessed during the screening.
- 4) Witnesses for the Claimant raised issues in the following areas:

Angina at rest and exertion, which is under Medical Conditions: The Claimant was rated as not having these conditions. The WVMI nurse recorded on the PAS that the Claimant reported she has angina pain with exertion or anxiety, and says that she has lost her "ntg". The WVMI nurse sent a fax (D-4) To Dr. [REDACTED] on February 13, 2008 in an attempt to obtain a diagnosis for arthritis and angina. The physician's office responded with a note attached to the bottom of the fax that says "Call tell her not dx in chart." The note was followed by the initials "RDC". The Department surmised that that initials indicated Dr. [REDACTED] was responding to the faxed request for information. The Claimant clarified during the hearing that Dr. [REDACTED] is her regular physician, and Dr. [REDACTED] is another physician who works at the same office. Dr. [REDACTED] is not the Claimant's regular physician. The Claimant testified during the hearing again that she does have angina and obtained another prescription for the nitro-glycerin within a few days of the assessment. The Department's position is that the response from the physician's office indicated the Claimant did not have angina, and therefore no points were assessed as a result.

- 5) **Vision**, which is under Functional Abilities: The Claimant was rated as impaired/correctable. The WVMI nurse recorded the following on the PAS:

Blind in the left eye and she can only see to read with her glasses. She can see to watch tv without glasses.

The Claimant's position is that she has a prosthetic left eye and this is not correctable. She states that she has to have someone read labels for her and that her vision is "bad" even with her glasses. She stated that her ex-mother-in-law bought her a large screen television so she can watch some tv. She states she cannot read novel type books. The Department's position is that she has adapted to the loss of the eye and is able to function in her home, and that this constitutes "correctable" vision.

- 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)

#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

- 7) 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 fifteen (15) points on a PAS completed by WVMI in February 2008 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 two (2) point to be awarded for vision, an additional one (1) point for angina with exertion, and one (1) additional point for angina at rest.
- 4) Although the Department made an attempt to obtain the diagnosis for angina when they sent the fax to the physician's office, the resulting response from that office was insufficient in that the regular physician did not respond, and the response was vague and did not rule out the possibility of the diagnosis. It only clarified that the non-attending physician did not see the diagnosis in the chart. The Claimant presented convincing evidence that she indeed does have angina at rest and exertion.
- 5) The totality of the evidence presented in the area of vision supports the finding that the Claimant should have been assessed as impaired/not correctable.
- 6) The total amount of points assessed amount to nineteen (19), 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 13th Day of June, 2008

**Cheryl Henson
State Hearing Officer**