



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

December 16, 2005

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 22, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to decrease homemaker hours under the Aged Disabled Waiver, A/DW, 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 A/DW program is based on current policy and regulations. Some of these regulations state as follows: The Aged/Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who meet all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. (Aged/Disabled (HCB) Services Manual 570- 570.1b (11/1/03).

The information which was submitted at your hearing revealed that at the time of the July 27, 2005 Pre-Admission Screening Assessment, you did not meet the eligibility criteria for level of care C under the Aged/Disabled Waiver Program in which you were previously assessed.

It is the decision of the State Hearings Officer to **uphold** the proposed action of the Department to decrease homemaker hours to a level B under the A/DW program.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
[REDACTED] PHSS - Boggess, BoSS - Keeney, WVMi - [REDACTED] WVLSP

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

_____,
Claimant,

Action Number: 05-BOR-6403

**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 November 22, 2005 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 November 22, 2005 on a timely appeal, filed August 12, 2005.

It should be noted here that the claimant's benefits have been 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

_____, Potomac Highlands Support Services

_____, Homemaker & Informal support

_____, RN, _____ County Commission On Aging

_____, _____ County Commission on Aging

_____, DHHR Guardian

_____, Counsel for the claimant, WVLSP

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services by phone

Jane Meadows, WVMJ

Presiding at the Hearing was Sharon K. Yoho, 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 Department was correct in their decision to reduce homemaker hours under the Aged/Disabled Waiver (HCB) program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service Manual §570 and §580

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Aged/Disabled Home and Community based Services Manual §570.1 c,d. and §580.2

D-1a Program Instruction memo dated November 1, 2004

D-2 Pre-Admission Screening, PAS, completed July 27, 2005

D-3 Notice of reduction in homemaker hours dated August 4, 2005

D-4 Eligibility Determination dated July 27, 2005

Claimant's Exhibits:

C-1 Letter from _____ CRNP, dated November 22, 2005

C-2 Letter from Manager of Apartment Complex dated November 17, 2005

VII. FINDINGS OF FACT:

- 1) Mr. _____ is a 50-year-old male. He is an active participant in the A/DW program. His A/DW eligibility was undergoing an annual evaluation on July 27, 2005.

- 2) Ms. Meadows completed A Pre-Admission Screening (PAS) in the claimant's home with, the claimant and his homemaker, Ms. [REDACTED] present. This PAS evaluation determined that the claimant remained eligible for the Aged/Disabled Waiver program however; it was determined that the level of care that he required had decreased from level C to a level B.
- 3) The July 27, 2005 assessment assigned this claimant with 16 points in determining the level of care required. The evaluating nurse assigned five (5) points in the areas of Medical Conditions/Symptoms. One (1) point was assigned for his inability to vacate in the event of an emergency. Nine (9) points were assigned in the area of functional levels, and one (1) point was assigned for administration of medication.
- 4) Issues addressed by the claimant's witnesses were in the areas of eating, grooming and bathing.
- 5) Mr. [REDACTED] is not mentally capable of cutting up the food on his plate small enough to avoid choking. His homemaker has had to perform the Heimlich maneuver on the claimant when he has choked on his food. The claimant has choked on a french fry. The nurse assigned a point for Dysphagia based on information given to her regarding his history of choking. The nurse did not assign a point for eating.
- 6) The evaluating nurse did assign one (1) point for grooming and one (1) for bathing, indicating that he does need physical assistance for his grooming and bathing needs. Nurse Practitioner, [REDACTED] included in a letter, provided as evidence, that Mr. [REDACTED], "will agree to shave, bathe, eat, etc., he will not follow through without continued encouragement and instructions." Witnesses attest that he is total care for grooming and bathing. The homemaker states that she does all of his grooming and bathing without assistance from him. She does say that he likes to take a shower and he can turn on the water and gets wet.
- 7) Aged/Disabled Home and Community Based Services Manual §570 – Program Eligibility for client:

Applicants for the A/DW Program must meet all of the following criteria to be eligible for the program:

- A. Be 18 years of age or older
- B. Be a permanent resident of West Virginia. The individual may be deinstitutionalized from a NF in any county of the state, or in another state as long as his permanent residence is in West Virginia.
- C. Be approved as medically eligible for NF Level of Care.
- D. Meet the Medicaid Waiver financial eligibility criteria for the program as determined by the county DHHR office, or the SSA if an active SSI recipient.

- E. Choose to participate in the A/DW Program as an alternative to NF care.
- 8) Aged/Disabled Home and Community Based Services Manual § 570.1.a – Purpose:
The purpose of the medical eligibility review is to ensure the following:
- A. New applicants and existing clients are medically eligible based on current and accurate evaluations.
 - B. Each applicant/client determined to be medically eligible for A/DW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term services needs.
 - C. The medical eligibility determination process is fair, equitable and consistently applied throughout the state.
- 9) Aged/Disabled Home and Community Based Services Manual# 570.1.b – Medical Criteria: An individual must have five deficits on the PAS to qualify medically for the A/DW Program. These deficits are derived from a combination of the following assessment elements on the PAS:
- A. #24: Decubitus - Stage 3 or 4
 - B. #25: In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. a) and b) are not considered deficits.
 - C. #26: Functional abilities of individual in the home.
 - Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)
 - Bathing ----- Level 2 or higher (physical assistance or more)
 - Grooming--- Level 2 or higher (physical assistance or more)
 - Dressing ---- Level 2 or higher (physical assistance or more)
 - Continence-- Level 3 or higher (must be incontinent)
 - Orientation-- Level 3 or higher (totally disoriented, comatose)
 - Transfer----- Level 3 or higher (one person or two person assist in the home)
 - Walking----- Level 3 or higher (one person or two person assist in the home)
 - Wheeling----- Level 3 or higher (must be Level 3 or 4 on walking in the home to use Level 3 or 4 for wheeling in the home. (Do not count outside the home)
 - D. #27: Individual has skilled needs in one or more of these areas B (g)suctioning , (h)tracheostomy, (i) ventilator , (k)parenteral fluids , (l)sterile dressings , or (m) irrigations.
 - E. #28: The individual is not capable of administering his/her own medication.

- 10)** Aged/Disabled Home and Community Based Service Manual # 570.1.c,d:
There are four levels of care for clients of ADW Homemaker services. Points will be determined as follows, based on the following sections of the PAS:

- #23 1 point for each (can have total of 12 points)
- #24 1 point
- #25 1 point for B, C, or D
- #26 Level 1 - 0 points
Level II - 1 point for each item A through I
Level III - 2 points for each item A through M; I (walking) must be equal to or greater than
Level III before points given for J (wheeling)
Level IV - 1 point for A, 1 point for E, 1 point for F, 2 points for G through M
- #27 1 point for continuous oxygen
- #28 - 1 point for B or C
- #34 - 1 point if Alzheimer's or other dementia
- #35 - 1 point if terminal

Level A	5-9 points	62 Hours per Month
Level B	10-17 points	93 Hours per Month
Level C	18-25 points	124 Hours per Month
Level D	26-44 points	155 Hours per Month

VIII. CONCLUSIONS OF LAW:

- 1) The Aged Disabled Waiver policy provides that an individual must be assigned 18 to 25 points to qualify as requiring a Level C in care, which is 124 hours per month in homemaker services and 10 to 17 points for Level B, which provides for 93 hours per month. The evaluating nurse assigned 16 points, which falls within the Level B of care.
- 2) It can be concluded by testimony and evidence presented during this hearing that the evaluating nurse should have assigned one (1) additional point in the area of eating. Testimony and evidence did not support the belief that this claimant is unable to assist in part of his grooming and bathing needs. One (1) additional point for eating would not change the level of care required by this claimant.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the evaluating nurse should have assigned 17 points during the PAS completion of July 27, 2005, which would still equate to needs within the Level B category. With the authority granted to me by the WV State Board of Review, I am ruling to **uphold** the Agency's proposed action to decrease this claimant's homemaker services 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 November, 2005.

**Sharon K. Yoho
State Hearing Officer**