



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Office of Inspector General

Board of Review

235 Barrett Street

Grafton WV 26354

May 10, 2006

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 19, 2006. 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.

One of these regulations specifies that for the Aged/Disabled Waiver Program, hours of service are determined based on an evaluation of the Pre-Admission Screening Form (PAS). A Level of Care is determined by a point system. Points are derived from medical conditions and deficits set forth in the PAS. Program services are limited to a maximum number of units/hours that are determined by the PAS which is completed, reviewed and approved by WVMI. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual § 570.1- 570.1. d)

The information submitted at the hearing revealed that as a result of your most recent medical evaluation (PAS), the agency determined your point total as 24 or a C Level of Care (124 hours maximum per month). Evidence offered during the hearing failed to establish additional points to change the Level of Care.

It is the decision of the State Hearing Officer to **uphold** the determination of the Agency as set forth in the January 24, 2006 notification. Evidence reveals that you currently qualify for a C Level of Care.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Senior Care of North Central WV
Bureau of Senior Services (BoSS)
West Virginia Medical Institute (WVMI)

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

Claimant,

v.

Action Number: 06-BOR-1028

West Virginia Department of Health and Human Resources,

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Examiner resulting from a fair hearing concluded on May 8, 2006 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 April 19, 2006 on a timely appeal filed February 2, 2006. It should be noted here that the Claimant's benefits/services 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

_____, claimant's daughter

Kay Ikerd, RN, BoSS (participating telephonically)

_____, RN, WVMi (participating telephonically)

Presiding at the hearing was Ron Anglin, State Hearing Examiner and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question 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 § 520, 570 and 580

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

E-1 Aged/Disabled Home and Community-Based Services Manual § 520, 570 and 580

E-2 Pre-Admission Screening (PAS) 2000 assessment completed on January 16, 2006

E-3 Notification of decrease, January 24, 2006

Claimant's Exhibits:

C-1 Progress notes, Dr _____, April 18, 2006 and statement Dr H _____, 1/31/06

VII. FINDINGS OF FACT:

1) The claimant is an active recipient of Aged/Disabled Home and Community-Based Waiver Services. As a result of an annual evaluation (E-2) completed by WVMi on January 16, 2006, WVMi determined the claimant's Level of Care to be C or 124 hours monthly- a reduction from level D. The agency provided notification to the claimant of the reduction in hours January 24, 2006 (E- 3). The claimant requested a hearing in a request dated January 31, 2006. This request was received by this examiner March 6, 2006 and was convened April 19, 2006.

2) Exhibits as noted in Section VI above were presented.

3) Testimony was heard from the individuals listed in Section III above. All persons giving testimony were placed under oath.

4) Based on the medical evaluation of January 16, 2006 and testimony of the WVMI nurse, the agency acknowledged a total of 24 points in determining a "Level of Care".

5) The agency awarded 8 points in Section 23 of the evaluation: Angina rest, Angina exertion, Dyspnea, Dysphagia, Pain, Diabetes, Mental Disorder and Other (HTN). Additional conditions/symptoms considered in this section are Significant Arthritis, Paralysis, Aphasia, and Contractures.

6) In Section 25 of the evaluation the agency awarded a total of 14 points with points awarded in all categories except vision and communication. Transferring, Walking and Wheeling were classified as levels 2, 3, and 4 respectively. Points were also awarded for dementia and ability to vacate.

7) Testimony provided on behalf of the claimant reveals that the claimant is able to pick up medication and ingest it himself. Concerns were expressed as to a recent decline in ambulation.

8) Aged/Disabled Home and Community-Based Waiver Manual 570.1.c and 570.1.d:
There will be four levels of care for clients of ADW Homemaker services. Points will be determined as follows, based on the following sections of the PAS 2005:

#23 - 1 Point for each (can have total of 12 points) Medical condition

#24 - 1 Point Decubitus

#25 - Level I - 0 points Functional levels

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

#26 - 1 point for continuous oxygen

#27 - 1 point for "No" answer- medication administration

#33 - 1 point if Alzheimer's or other dementia

#34 - 1 point if terminal

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 requires a specific number and degree of functional deficits for the assignment of points to arrive at the Level of Care. The claimant was awarded a total of 24 points by the agency based on the evaluation of January 16, 2006, which resulted in a C "Level of Care".
- 2) Directives provide the following definition of *Ability to self medicate* - a person is incapable of self medicating if the prescription medication must be placed in the recipient's hand, mouth, tube or eye by someone other than the recipient at all times. The agency did not award a point in this category. Testimony reveals that the claimant is able to pick up and administer his medication thus indicating by the above definition that he is able to self medicate.
- 3) Policy requires a minimum total of 26 points to qualify for a care level of D. The agency acknowledged a total of 24 points. Evidence offered during the hearing failed to convincingly establish additional deficits which might increase the *level of care* point total.
- 4) A total of 24 points results in a C level of care - a maximum of 124 hours per month.

IX. DECISION:

The Agency's determination as set forth in the January 24, 2006 notification is upheld. The claimant currently qualifies for a C Level of Care.

The claimant and the case management agency are reminded that if the claimant's care needs have increased since the January 16, 2006 evaluation, a process is in place to request additional hours of care.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

Entered this 10th Day of May, 2006

RON ANGLIN
State Hearing Examiner

CLAIMANT'S RECOURSE TO ADMINISTRATIVE HEARING DECISION
For
Public Assistance Hearings,
Administrative Disqualification Hearings, and
Child Support Enforcement Hearings

A. CIRCUIT COURT

Upon a decision of a State Hearing Officer, the claimant will be advised he may bring a petition in the Circuit Court of Kanawha County within four months (4) from the date of the hearing decision.

The Court may grant an appeal and may determine anew all questions submitted to it on appeal from the decision or determination of the State Hearing Officer. In such appeals a certified copy of the hearing determination or decision is admissible or may constitute prima facie evidence of the hearing determination or decision. Furthermore, the decision of the circuit Court may be appealed by the client or petitioner to the Supreme Court of Appeals of the State of West Virginia.

B. THE UNITED STATE DEPARTMENT OF HEALTH AND HUMAN SERVICES

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the United States Department of health and Human Services, Washington, D.C. 20201.

C. THE UNITED STATE DEPARTMENT OF AGRICULTURE

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the Department of Agriculture, Washington, D.C. 20250.