



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

August 2, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 1, 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.

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 your 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 520 & 570.1)

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
CWVAS

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

_____,
Claimant,

v.

Action Number: 06-BOR-1100

**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 August 2, 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 August 1, 2006 on a timely appeal filed February 9, 2006. The hearing was originally scheduled for June 15, 2006, but was rescheduled at the Claimant's request.

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
_____, Case Manager, CWVAS
_____, Homemaker, Mountain Cap
Brian Holstein, Licensed Social Worker, BoSS (participating telephonically)
_____, RN, WVMI (participating telephonically)
_____, Claimant's daughter (observing)

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review. Observing was Cheryl McKinney, 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 520, 570 and 580

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 520, 570 and 580
- D-2 Pre-Admission Screening (PAS) 2005 assessment completed on January 17, 2006
- D-3 Notice of Decision dated February 1, 2006

Claimant's Exhibits

- C-1 Medical records
- C-2 Definition of osteogenesis

VII. FINDINGS OF FACT:

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter ADW, was undergoing an annual reevaluation to verify continued medical eligibility.
- 2) _____, RN, West Virginia Medical Institute, completed a medical assessment (D-2) on January 17, 2006 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

LOC “B” (17 points)- 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 LOC “C”- eligible for four (4) hours per day or 124 hours per month of homemaker services.

- 3) The Claimant was sent notification on February 1, 2006 (D-3) advising her of the proposed reduction in hours.
- 4) The Claimant contended that additional points should be awarded in the following areas:

Significant arthritis- The Claimant testified that she has arthritis through most of her body. She testified that she has no strength in her hands and is not supposed to reach upward because her ribs move. She stated that she has broken her ribs by turning over in bed. She testified that she is in pain all of the time and takes hydrocodone to relieve arthritis pain.

Ms. [REDACTED] testified that the Claimant’s physician did not include a diagnosis of arthritis on the PAS referral form. Diagnoses listed included anxiety, chronic pain syndrome, hypertension and osteogenesis imperfecta. Ms. [REDACTED] pointed out that the Claimant did receive one point for pain since she was taking medication. The health assessment section of the PAS completed by Ms. [REDACTED] indicates that the Claimant reported arthritis.

One point is awarded for significant arthritis as the Claimant takes prescribed pain medication and provided credible testimony regarding this condition.

Dysphagia- The Claimant testified that she has difficulty swallowing food and both small and large pills. She testified that she sometimes becomes strangled while drinking beverages.

Ms. [REDACTED] testified that the Claimant did not report swallowing difficulties at the time the PAS was completed so no information was gathered to determine if any swallowing studies had been conducted.

One point is awarded for dysphagia as a result of the Claimant’s testimony concerning swallowing difficulties.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 570.1.c and 570.1.d (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- 1 point for each (can have total of 12 points)
- #24- 1 point
- #25- Level I- 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 are 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 for Alzheimer’s or other dementia
- #34- 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 2005.
- 2) The Claimant received 17 points on a PAS completed by Ms. [REDACTED] in January 2006 in conjunction with an annual reevaluation.
- 3) As a result of testimony presented during the hearing, two (2) additional points are awarded to the Claimant.
- 4) This 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 2nd Day of August, 2006.

Pamela L. Hinzman
State Hearing Officer