



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

June 21, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 7, 2006. 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 January 12, 2006 Pre-Admission Screening Assessment, you did 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 **reverse** 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
Bogges, BoSS - [REDACTED], WVMI

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

Claimant,

v.

Action Number: 06-BOR-1246

**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 7, 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 June 7, 2006 on a timely appeal, filed February 22, 2006.

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

____, claimant's friend

____, American Home Care

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services by phone

____, WV Medical Institute by phone

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-2 Pre-Admission Screening, PAS, completed January 12, 2006

D-3 Eligibility Determination dated January 12, 2006

D-4 Notice of proposal to decrease homemaker hours January 24, 2006

VII. FINDINGS OF FACT:

- 1) Ms. ____ is a 36-year-old female. She is an active participant in the A/DW program and her eligibility was undergoing an annual evaluation on January 12, 2006.
- 2) A WV Medical Institute nurse completed a Pre-Admission Screening (PAS) in Ms. ____'s home with the claimant, and Mr. ____ 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 she required had decreased from level C to a level B with 16 points awarded.
- 3) This claimant has primary diagnoses of Cerebral Palsy. Other medical conditions listed on the PAS were migraines, depression, asthma and GERD.

- 4) The November 12, 2006 PAS assigned this claimant with 16 points in determining the level of care required. The evaluating nurse assigned three (3) points in the areas of Medical Conditions/Symptoms, eleven (11) points in the area of functional levels, one (1) point for medicating and one (1) point for inability to vacate in an emergency.
- 5) Issues addressed by the claimant and her witnesses and by documentation provided were in the Medical Conditions/Symptoms section of the PAS. The areas of concern were in pain, dyspnea, dysphagia, aphasia and paralysis.
- 6) The evaluating nurse did not consider the documented diagnosis of migraines as an indication that the client experiences pain. Since pain was not one of the documented diagnoses, a point was not assigned for pain. Ms. ____ advised the nurse at the PAS and also testified that she has episodes of migraines and has a standing order at Ruby Memorial Hospital for Taradol to treat her migraines. She advised the nurse that she has lots of pain in her joints as well.
- 7) Ms. ____ is diagnosed with asthma, which is listed on the PAS in the diagnosis section. She is prescribed Albuterol in an inhaler, which is also listed on the PAS. She reports using the inhaler approximately three times per day. The evaluating nurse was not advised of any shortness of breath during the evaluation so therefore did not assign a point for dyspnea.
- 8) The claimant was not diagnosed with dysphasia. She reported during the PAS that she has dysphasia due to gastric reflux disease, GERD. Ms. ██████ explained at the PAS and again at the hearing that GERD and dysphasia are two different things. Ms. ____ advised the nurse at the evaluation that she has pill bottles upset in her hand and she takes medication from her hand. She also reported that some of her medication was in liquid form. She did not report to the nurse any swallowing problems while eating or in taking her medication.
- 9) Ms. ____ sometimes has a hard time finding the correct words to use, but is able to make her needs and wants known without much difficulty.
- 10) The claimant has some weakness in her extremities, but is not diagnosed with any paralysis.
- 11) Aged/Disabled Home and Community-Based Services Manual Section 570 (D-1)- Program Eligibility for client:

Applicants for the ADW Program must meet the following criteria to be eligible for the Program:

C. Be approved as medically eligible for NF Level of Care.

- 12) Aged/Disabled Home and Community-Based Services Manual Section 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.

13) Aged/Disabled Home and Community-Based Services Manual Section 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. Decubitus - Stage 3 or 4 (Item 24 on PAS 2005)
- B. Unable to vacate a building- a person is physically unable at all times at Level 3 or higher in walking or mentally incapable of leaving the building at Level 3 or higher in orientation with a diagnosis of dementia, Alzheimer's, or related condition. (Item 25, I and 33, on the PAS 2005).
- C. Functional abilities of individual in the home. (Item 25 on the PAS 2005).
 - 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 total incontinent- defined as when the recipient has no control of bowel or bladder functions at any time)
 - 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 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. 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. (Item 26 on the PAS 2005)
- E. The individual is not capable of administering his/her own medications is defined as

an individual not capable of administering his/her own medications 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.

- 14) 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 2005:

- #23 1 point for each (can have total of 12 points) Medical Condition
- #24 1 point Decubitus
- #25 Level 1 - 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 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

Levels of Care Service Limits:

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. 10 to 17 points indicates a Level B which is for 93 hours per month in homemaker services. The evaluating nurse assigned 16 points, which falls within the Level B of care.
- 2) Evidence and testimony support that the claimant should have been assessed one (1) point during the January 12, 2006 PAS for pain and one (1) point for dyspnea. Testimony and evidence is clear that Ms. ____ experiences pain and has been diagnosed with migraines, which is directly related to pain. Ms. ____ is diagnosed with asthma and is prescribed an inhaler for this condition. The medical condition of asthma is commonly known to involve shortness of breath, and Ms. ____ uses the inhaler daily for this condition.
- 3) Evidence and testimony did not support additional points should have been assessed for dysphasia, aphasia or paralysis. Two additional points assigned for pain and for dyspnea would result in points being elevated to 18, which would indicate a C level of care.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the evaluating nurse should have assessed the claimant with 18 points, which would put her in the level C category for care. With the authority granted to me, by the WV State Board of Review, I am ruling to **reverse** 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 21st Day of June, 2006.

**Sharon K. Yoho
State Hearing Officer**