



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
227 Third St.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

January 11, 2006

Dear Ms.____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 4, 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 revealed 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 remain at 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 proposed action 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
CWVAS
BoSS
WVMI

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

_____,

Claimant,

v.

Action Number: 05-BOR-6709

**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 January 11, 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 January 4, 2006 on a timely appeal filed September 20, 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 niece and Homemaker, Care
_____, Case Manager, CWVAS
Brian Holstein, Licensed Social Worker, BoSS (participating telephonically)
_____, RN, WVMI (participating telephonically)

Presiding at the hearing was Pamela L. Hinzman, 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) 2000 assessment completed on August 25, 2005
- D-3 Notice of Decision dated September 15, 2005

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 August 25, 2005 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 15 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a LOC "B" (15 points)- eligible for three (3) hours per day or 93 hours per month of homemaker services.
- 3) The Claimant was sent notification on September 15, 2005 (D-3) advising her of the proposed reduction in hours.
- 4) Witnesses for the Claimant contended that additional points should be awarded in the

following areas:

Eating- Ms. _____ testified that the Claimant cannot lift her arms when her back “is totally out” and requires physical assistance with eating and cutting meat during these times. Ms. [REDACTED] testified that the Claimant did not report this at the time the PAS was completed, but Ms. _____ indicated that the Claimant overstates her abilities.

Transferring and walking- Ms. _____ testified that the Claimant requires physical assistance with transfers and walking, even while using her cane. She stated that she always assists the Claimant with these activities. PAS nursing comments indicate that the Claimant’s former case manager was present during the assessment and had reported that the Claimant requires physical assistance at times with transfers and also requires assistance in the morning getting out of bed due to her pain. Ms. [REDACTED] testified that the Claimant was able to transfer on the date of the assessment by pushing down on her chair and was able to hold onto furniture to ambulate. The Claimant had indicated to Ms. [REDACTED] that she has an intercom system and calls others for physical assistance if she encounters difficulty in transferring or ambulating.

Angina upon exertion- Ms. _____ testified that the Claimant has reported angina upon exertion. The Claimant previously had a stress test and has nitroglycerin on hand. Ms. [REDACTED] indicated that this condition was not reported during the assessment.

Bowel incontinence- Ms. _____ testified that the Claimant is often constipated, depends on laxatives, and regularly loses control of her bowels. The Claimant’s condition has worsened, however, since the PAS was completed. Ms. [REDACTED] testified that the Claimant stated during the assessment that she does not lose control of her bowels. In addition, Ms. [REDACTED] contended that the use of laxatives implies that an individual is constipated.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 570.1 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- 1 point for B, C or D
- #26- 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
- #27- 1 point for continuous oxygen
- #28- 1 point for Level B or C
- #34- 1 point for Alzheimer’s or other dementia
- #35- 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. Based on testimony provided during the hearing, the Claimant is awarded one (1) additional point for physical assistance with eating. Ms. _____ testified that the Claimant is unable to feed herself and cut up meat during the times she cannot lift her arms due to back problems.
2. One (1) additional point is awarded for angina upon exertion. A point had been awarded for angina at rest and testimony is reasonable that the Claimant also experiences this condition upon exertion.
3. One (1) additional point is awarded for one-person assistance with walking and one (1) additional point is awarded for one-person assistance with transferring. The Claimant's homemaker testified that she always assists the Claimant with these activities when she is present. While Ms. _____ testified that the Claimant was able to transfer and ambulate by holding onto furniture on the date of the assessment, recordings on the PAS indicate that the Claimant's former case manager was present on that date and had reported that the Claimant requires assistance getting out of bed in the morning due to pain.
4. No additional points are awarded for bowel incontinence as the Claimant's degree of incontinence at the time of the PAS assessment cannot be determined. In addition, Ms. _____ testified that the Claimant's condition has worsened since the PAS was completed.
5. This brings the Claimant's total number of points to 18, which is indicative of a Level of Care "C" (18 to 25 points) 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 11th Day of January, 2006.

**Pamela L. Hinzman
State Hearing Officer**