



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 9, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 28, 2005. 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
Select In-Home Services
BoSS

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

_____,

Claimant,

v.

Action Number: 05-BOR-6738

**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 9, 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 December 28, 2005 on a timely appeal filed October 4, 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:

[REDACTED], Claimant
[REDACTED], Homemaker, Select In-Home Services
[REDACTED], Homemaker, Select In-Home Services
[REDACTED], RN, Select In-Home Services
[REDACTED], owner, Select In-Home Services
[REDACTED], RN, WVMI
Kay Ikerd, RN, BoSS (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 September 7, 2005
- D-3 Notice of Decision dated September 27, 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) [REDACTED], RN, West Virginia Medical Institute, completed a medical assessment (D-2) on September 7, 2005 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.

- 3) The Claimant was sent notification on September 27, 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:

Transferring and walking- Witnesses contended that the Claimant should be rated as a Level 3 in the areas of transferring and walking as she must be physically assisted with these activities.

Ms. [REDACTED], who was the Claimant's homemaker in September 2005 and was present when the PAS was completed, testified that she helped the Claimant out of her chair and assisted her in walking to the refrigerator on the date of the assessment. Ms. [REDACTED] and Ms. [REDACTED] also testified that they witnessed Ms. [REDACTED] physically assist the Claimant with transferring and walking on the date of the assessment. Ms. [REDACTED] testified that she always requires physical assistance with transferring and walking and was assisted by Ms. [REDACTED] on the assessment date. In addition, Ms. [REDACTED] testified that the Claimant's husband is in the home to assist her with transfers and ambulation in the absence of the homemaker.

Ms. [REDACTED] testified that she witnessed the Claimant transfer and walk on the date of the assessment by holding onto furniture and a cane. The Claimant was rated as a Level 2 in these areas since she requires supervision/assistive device. Ms. [REDACTED] testified that the Claimant told her she sometimes requires assistance with transferring and walking. This information is documented on the PAS and was reviewed with those present during the assessment, Ms. [REDACTED] stated. No objections were raised on that date.

- 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 granted a Level of Care 3 in the areas of transferring and walking. One (1) additional point is awarded for physical assistance with transferring and one (1) additional point is awarded for physical assistance with walking. The Claimant testified that she always requires physical assistance with these activities and, while conflicting testimony was offered, the Claimant’s three witnesses testified that the Claimant was physically assisted with transferring and ambulation on the date of the assessment.

2. The two (2) additional points bring the Claimant’s total number of points to 19, which is indicative of a Level of Care “C.” The Claimant is eligible to receive four (4) hours per day of homemaker services or 124 hours per month.

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 9th Day of January, 2006.

**Pamela L. Hinzman
State Hearing Officer**