



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

April 24, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 13, 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 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 **uphold** the proposal of the Department to decrease your Level of Care under the Aged/Disabled Waiver Program. However, the Level of Care should be reduced to a Level "C" instead of the Level "B" proposed by the Department.

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-7088

**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 April 24, 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 13, 2006 on a timely appeal filed December 6, 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
_____, husband of Claimant
_____, sister-in-law of Claimant
_____, RN, Care, Inc.
_____, Homemaker, Care, Inc.
_____, Case Manager, CWVAS
Libby Boggess, 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) 2005 assessment completed on November 2, 2005
- D-3 Notice of Decision dated November 7, 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 November 2, 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. It should be noted that the Claimant previously qualified as a LOC "D"- eligible for five (5) hours per day or 155 hours per month of homemaker services.

- 3) The Claimant was sent notification on November 7, 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:

Significant arthritis- Ms. _____ testified that the Claimant has been diagnosed with arthritis and has pain in her right arm. Mr. _____ added that his wife takes three to four pain tablets per week. The PAS indicates that the Claimant takes one pain tablet per month, but Mr. _____ believes that confusion arose when the question was asked concerning the number of pain tablets the Claimant takes. He testified that the Claimant had been taking Vioxx for arthritis, however, the physician felt the drug was unsafe and no longer prescribed it to her. The PAS indicates that the Claimant denied having arthritis.

Pain- The Claimant experiences arthritis pain and headaches and takes darvocet to alleviate the pain. This medication was listed on the PAS by Ms. [REDACTED], however, nursing comments on the PAS indicate that the Claimant denied arthritis pain and stated that the medication was taken for occasional headaches.

Contracture- Ms. [REDACTED] testified that the Claimant's hand is drawn and an apparatus is utilized to keep the hand from completely contracting and freezing. Ms. _____ testified that she cannot raise her right arm.

Total care with bathing- Mr. _____ testified that his wife should be rated as requiring total care with bathing as 90 percent of her bath is given to her and she only participates in about 10 percent of her own bathing. The Claimant testified that she can wash her face and certain other portions of her body. Ms. Boggess responded that the Claimant is rated as requiring physical assistance if she makes any contribution to her own bathing.

Incontinence of bowel and bladder- Mr. _____ testified that his wife has difficulty holding her bladder and bowel and has accidents if he cannot reach her quickly enough. Mrs. _____ testified that she has accidents at times when her husband is outside and cannot get to her in time when she calls him. Ms. Boggess testified that the Claimant is not incontinent just because of her husband's inability to reach her in time for toileting. Mrs. _____ testified that she has accidents about two times per week irregardless of whether her husband can get to her in time.

Physical assistance with walking- Witnesses testified that the Claimant has no use of her right arm and has an unsteady gait at times. She at times requires physical assistance with ambulation.

Medication administration- Mr. _____ testified that the Claimant's medication is occasionally placed in apple butter as she has had problems with choking. Ms. [REDACTED] was not the Claimant's homemaker in November 2005, but Mr. _____ testified that the previous homemakers placed medication in the Claimant's hand. The PAS indicates that the homemaker lays out medication and the Claimant takes the pills

on her own.

- 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- 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
- #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) Based on testimony provided during the hearing, the Claimant is awarded one (1) additional point for significant arthritis and one (1) additional point for pain. The Claimant's husband testified that she takes darvocet for both headaches and arthritis pain, and darvocet was listed as a medication on the Claimant's PAS.
- 2) One (1) additional point is awarded for physical assistance with walking. Testimony is credible that the Claimant requires physical assistance with ambulation at times.
- 3) No additional points are awarded for medication administration as information is unclear concerning whether medication must be placed in the Claimant's hand at all times.
- 4) No additional points are awarded for contracture as the degree of the Claimant's arm immobility is unclear.
- 5) No additional points are awarded for total care in bathing as the Claimant testified that she is able to participate to a limited degree in her own bathing.

- 6) No additional points are awarded for incontinence of bladder and/or bowel as no testimony was offered to indicate that the Claimant is totally incontinent.
- 7) This brings the Claimant's total number of points to 20, 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 **uphold** the Agency's proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled, Title XIX (HCB) Waiver Program. However, the Level of Care should be decreased to a Level "C" instead of the Level "B" proposed by the Department.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 24th Day of April, 2006.

Pamela L. Hinzman
State Hearing Officer