



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 4, 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 WVM. (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 "D" rating. As a result, you are eligible to receive five (5) hours per day or 155 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
WVM
CWVAS

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

_____,
Claimant,

v.

Action Number: 05-BOR-7168

**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 4, 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 December 20, 2005. The hearing was originally scheduled for March 22, 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:

██████████, Case Manager, CWVAS
██████████, RN, Braxton County Senior Center
_____, Claimant's sister and Power of Attorney
_____, Claimant's niece and Homemaker, Braxton County Senior Center
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. 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 November 30, 2005
- D-3 Notice of Decision dated December 5, 2005

Claimant's Exhibits

- C-1 Medical records
- C-2 Diagnosis section of December 4, 2003 PAS

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 30, 2005 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 20 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a LOC "C" (20 points)- eligible for four (4) hours per day or 124 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 December 5, 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:

Angina at rest and exertion- Ms. [REDACTED] testified that the Claimant suffers from angina at both rest and exertion and has been admitted to the hospital with complaints of chest pain, congestive heart failure and coronary artery disease. While the Claimant has no specific diagnosis of angina, she has been on cardiac medication for chest pain, Ms. [REDACTED] testified.

Ms. [REDACTED] testified that the Claimant had reported suffering from chest pain in the past, but said she had not been specifically diagnosed with angina and was not taking medication at the time of the assessment. Health assessment comments on the PAS indicate that the Claimant reported chest pain as a condition during the assessment.

Based on testimony presented during the hearing and in light of the Claimant's heart condition, it is reasonable to believe that she suffers from angina. Therefore, one (1) point is awarded for angina at rest and one (1) point is awarded for angina upon exertion.

Significant arthritis- Ms. [REDACTED] testified that the Claimant has a history of osteoarthritis and has taken medication, including Vioxx and Celebrex, for this condition in the past. She testified that the Claimant was not taking arthritis medication at the time of the assessment because the medication caused gastric problems. Ms. [REDACTED] stated that the Claimant currently takes pain medication. She provided information from the Claimant's December 4, 2003 PAS (C-2) which lists a secondary diagnosis of osteoarthritis in both knees and pointed out that such a condition does not disappear.

Ms. [REDACTED] testified that the Claimant reported she previously had arthritis in her knees, but was not taking any arthritis medication at the time of the assessment.

Based on information presented during the hearing, one (1) additional point is awarded for significant arthritis.

Total care with dressing- Ms. [REDACTED] testified that the Claimant is unable to dress herself. She testified that the Claimant can lift her legs so that her caretakers can slide pants onto them, but the trousers have to be totally pulled up by the caretakers due to weakness in the Claimant's arms and shoulders. She testified that the Claimant cannot fasten buttons or snaps, manipulate zippers or hook her bra. Ms. [REDACTED] testified that the Claimant attempts to lift her leg while being dressed, but that her leg becomes entangled in her Pull-Ups. She testified that the Claimant places her hands at her waist after the pants are pulled up to adjust the trousers if needed. Ms. [REDACTED] testified that she also puts on the Claimant's, shirts, socks and shoes.

Ms. [REDACTED] testified that the Claimant said she could not bend over to put on shoes and socks, but that she could assist with her dressing and wore clothing that was easy to pull up because she would become light-headed.

One (1) additional point is awarded for total care with dressing. While testimony indicates that the Claimant tries to participate in her own dressing, her abilities are limited to attempts at lifting her leg and making slight adjustments to the waist of her pants with her hands after the trousers have already been pulled up by others. Testimony reveals that the Claimant is unable to put on her pants, shirts, bra, shoes and socks. Therefore, her attempts at cooperation with dressing cannot be construed as participation of any significance.

Total care with grooming- Ms. [REDACTED] testified that the Claimant is unable to wash or comb her hair. A podiatrist provides her toenail care as she is a diabetic, and other caretakers provide fingernail care. The Claimant recently had all of her teeth pulled so she no longer needs assistance with her oral care.

Ms. [REDACTED] testified that the Claimant had indicated she needs assistance combing her hair due to shortness of breath upon raising her arms. The Claimant also reported needing assistance with her teeth and nail care.

No testimony was presented to indicate that the Claimant can participate in any portion of her grooming. Therefore, one (1) additional point is awarded for total care with grooming.

Total incontinence of bladder- Ms. [REDACTED] testified that the Claimant cannot make it to the toilet the majority of the time and continuously wears adult diapers. Ms. [REDACTED] testified that washable pads are placed on the Claimant's bed to prevent mattress damage from urine. Ms. [REDACTED] testified that the Claimant does make it to the restroom at times, but most of the time she has accidents.

Mr. Holstein testified that policy states an individual must have no bladder control at any time in order for total incontinence to be established. Ms. [REDACTED] testified that the Claimant walked to the bathroom with assistance when she visited her in her hospital room on the date of the assessment. Ms. [REDACTED] responded that the Claimant had wet herself prior to going to the bathroom on that date, but had not wanted Ms. [REDACTED] to know due to embarrassment.

No additional points are awarded for incontinence of bladder as the Claimant is not incontinent of bladder at all times since she makes it to the toilet on occasion.

Total assistance with wheeling- Ms. [REDACTED] testified that the Claimant has severe Chronic Obstructive Pulmonary Disorder and is in need of a lung transplant. Therefore, she has very little respiratory capacity.

Mr. Holstein responded that the Claimant had been rated as a Level 3, situational assistance, in wheeling and has already been awarded the maximum number of points in this area.

No additional points can be awarded in this area.

Inability to administer medication- Ms. [REDACTED] testified that the Claimant is unable to give herself insulin injections as a result of tremors and cannot take pills out of a medication planner. She testified that pills have to be placed in the Claimant's hand and that the Claimant often drops the pills.

Ms. [REDACTED] testified that the Claimant had said her daughter draws up her insulin, but that she was able to take her medications if they are set up for her.

One (1) additional point is awarded for medication administration as pills must be placed in the Claimant's hand.

Both Ms. _____ and Ms. _____ testified that the Claimant was allowed to speak for herself on the date of the assessment because they did not want to embarrass her by correcting her responses. Ms. _____ pointed out that the Claimant responded incorrectly when asked the name of the U.S. President during Ms. [REDACTED] assessment.

- 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 20 points on a PAS completed by Ms. [REDACTED] in November 2005 in conjunction with an annual reevaluation.
- 3) As a result of testimony presented during the hearing, six (6) additional points are awarded to the Claimant.
- 4) This brings the Claimant's total number of points to 26, which is indicative of a Level of Care "D" and renders the Claimant eligible for five (5) hours per day or 155 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 4th Day of August, 2006.

**Pamela L. Hinzman
State Hearing Officer**