



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

May 4, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 3, 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 "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 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-7245

**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 May 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 May 3, 2006 on a timely appeal filed January 3, 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:

[REDACTED], friend of Claimant
[REDACTED], Case Manager, CWVAS
[REDACTED], Homemaker, Mountain Cap of WV
Brian Holstein, Licensed Social Worker, BoSS (participating telephonically)
[REDACTED] 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 October 14, 2005
- D-3 Notice of Decision dated December 2, 2005

Claimant's Exhibits:

- C-1 Letter from Dr. [REDACTED] dated May 2, 2006
- C-2 Drug reference for [REDACTED]
- C-3 Hearing decision dated July 19, 2005

A letter from [REDACTED] received on behalf of the Claimant following the hearing was not admitted or considered as evidence.

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 October 14, 2005 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 24 points to documented medical

conditions that require nursing services and meets the criteria necessary to qualify as a LOC "C" (24 points)- eligible for four (4) hours per day or 124 hours per month of homemaker services.

- 3) The Claimant was sent notification on December 2, 2005 (D-3) advising him of the proposed reduction in hours.
- 4) Witnesses for the Claimant contended that additional points should be awarded in the following areas:

Vision (impaired/not correctable)- Ms. [REDACTED] provided a letter from Dr. [REDACTED] dated May 2, 2006 (C-1) which indicated that the Claimant had a comprehensive eye exam and obtained eye glasses on October 12, 2005. The letter states:

_____ has had some problems since he got the glasses.
Because of him being a diabetic it is very normal that his
vision fluctuates.

Significant arthritis- Testimony indicated that the Claimant has had arthritis for some time and is currently taking colchicine, which is used for gout and gouty arthritis, according to documentation provided in Exhibit C-2. It was noted that the Claimant had only recently started taking colchicine, but that he did have arthritis on the date the PAS was completed.

Wheeling (situational assistance)- Ms. [REDACTED] who was present on the date the PAS was completed, testified that those present on that date had mistakenly forgot to inform Ms. [REDACTED] that the Claimant has a wheelchair and often requires assistance to maneuver the wheelchair due to his health problems.

Dysphasia- Ms. _____ testified that the Claimant has difficulty swallowing and that this condition was present on the date of the assessment.

Ms. [REDACTED] indicated that if information presented by the Claimant's witnesses had been provided to her on the date of the assessment she would have noted it on the PAS.

- 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 significant arthritis and one (1) additional point for dysphasia as witnesses provided convincing testimony that these conditions existed on the date of the assessment.
2. Two (2) additional points are awarded for situational assistance with wheeling. The Claimant had been rated as Level 4 in walking (two-person assistance) and testimony indicated that those present at the assessment mistakenly failed to inform Ms. [REDACTED] of the Claimant's wheelchair use.
3. No additional points are awarded for vision (impaired, not correctable) as the Claimant's degree of impairment cannot be adequately determined by the information provided.
4. The four (4) additional points bring the Claimant's total number of points to 28, which is indicative of a Level of Care "D" (26 to 44 points) 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 May, 2006.

Pamela L. Hinzman
State Hearing Officer