



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Joe Manchin III
Governor

Office of Inspector General
Board of Review
235 Barrett Street
Grafton WV 26354

Martha Yeager Walker
Secretary

May 30, 2006

Dear Ms. _____:

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' determination concerning Level of Care (monthly hours of care services) under the Medicaid Title XIX (Home & Community-Based) Waiver 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.

One of these regulations specifies that for the Aged/Disabled Waiver Program, hours of service are determined based on an evaluation of the Pre-Admission Screening Form (PAS). A Level of Care is determined by a point system. Points are derived from medical conditions and deficits set forth in the PAS. Program services are limited to a maximum number of units/hours that are determined by the PAS which is completed, reviewed and approved by WVMI. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual § 570.1-570.1. d)

The information submitted at the hearing revealed that as a result of your most recent medical evaluation (PAS), the agency determined your point total as 23 or a C Level of Care (124 hours maximum per month). Evidence offered during the hearing established 3 additional points, resulting in a total of 26 points.

It is the decision of the State Hearing Examiner to **reverse** the determination of the Agency as set forth in the January 3, 2006 notification. Evidence reveals that the claimant continues to qualify for a D Level of Care.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Libby Bogges, RN, Bureau of Senior Services (BoSS)
[REDACTED], West Virginia Medical Institute (WVMI)

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

Claimant,

Action Number 06-BOR- 871

v.

**West Virginia Department of Health and Human Resources,
Respondent.**

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Examiner resulting from a fair hearing concluded on May 30, 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 received by the Bureau of Senior Services January 18, 2006 and by the Board of Review February 6, 2006.

II. PROGRAM PURPOSE:

The Program entitled Medicaid Title XIX Waiver (HCB) 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

_____, mother to claimant

_____, CM, Health Consultants Plus.

_____, HM

_____, RN, Doddridge Senior Citizens

Kay Ikerd, RN, BoSS (by phone)

_____, RN, WVMi (by phone)

Presiding at the hearing was Ron Anglin, State Hearing Examiner and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the agency was correct in their determination concerning Level of Care (hours of care) under the Medicaid Title XIX Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled and Community-Based Services Waiver Policy Manual § 570.1- 570.1, d.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

E-1 A/D Waiver Manual § 503- 510, 520.2 - 520.4, 570.1.b. - 580.2.c.

E-2 WVMi Independent Review (PAS) completed 12/29/05

E-3 Notification, 1/3/06

C-1 Statement, _____, PT, 5/3/06

C-2 Statement Dr. _____, 4/18/06

C-3 Statement Dr. _____, 5/2/06

VII. FINDINGS OF FACT:

1) The claimant is an active recipient of Aged/Disabled Home and Community-Based Waiver Services. As a result of an annual evaluation (E-2) completed by WVMi on December 29, 2005, WVMi determined the claimant's Level of Care to be C or 124 hours monthly- a reduction from level D. The agency provided notification to the claimant of the reduction in hours January 3, 2006 (E-3). The claimant requested a hearing in a request dated January 13, 2006. This request was received by this examiner February 6, 2006 and a hearing was scheduled for and convened May 3, 2006. Services under the Medicaid Title XIX Waiver (HCB) Program have continued at

the previous level.

2) Exhibits as noted in Section VI above were presented.

3) Testimony was heard from the individuals listed in Section III above. All persons giving testimony were placed under oath.

4) Based on the medical evaluation of December 29, 2005 and testimony of the WVMi nurse, the Agency acknowledged a total of 23 points in determining a C "Level of Care".

5) The agency awarded 5 points in Section 23 of the evaluation: Dyspnea, Pain, Contractures, mental disorder and Other (CP). Additional conditions/symptoms considered in this section are Angina Rest, Angina Exertion, Significant Arthritis, Paralysis, Dysphagia, Aphasia, and Diabetes.

6) In Section 25 of the evaluation a total of 15 points were awarded. Bathing, Dressing and Grooming were all –total care. Transferring, Walking and Wheeling were all level 3 or higher. Eating was noted as a level 2- with assistance

7) On the evaluation 1 point each was awarded for medication administration, ability to vacate and dementia or a related condition. (total - 3)

8) Credible, sworn testimony provided by and on behalf of the claimant reveals that the claimant suffers from dysphagia on a continuous basis having significant difficulty with choking and swallowing. She must be spoon fed as she is unable to handle utensils due to contractures and lack of motor control of her hands. She also has pain from arthritis and is taking medication for that condition.

9) Dr Russell Biundo in a statement dated April 18, 2006 states, " _____ is a very nice young woman who has had difficulty with spastic cerebral palsy with quadriparesis. She has dysarthria and Dysphagia. She also has arthrosis of the hip especially on the left side. "

10) _____, Physical Therapist, in a statement dated May 3, 2006 states, " _____ has spastic cerebral palsy, quadriparesis, arthritis and other medical complications too numerous to list."

11) Aged/Disabled Home and Community-Based Waiver Manual 570.1.c and 570.1.d:
There will be four levels of care for clients of ADW Homemaker services. Points will be determined as follows, based on the following sections of the PAS 2005:

#23 - 1 Point for each (can have total of 12 points) Medical condition

#24 - 1 Point Decubitus

#25 - Level I - 0 points Functional levels

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 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 if Alzheimer's or other dementia

#34 - 1 point if terminal

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 requires a specific number and degree of functional deficits for the assignment of points to arrive at the Level of Care. The claimant was awarded a total of 23 points by the agency based on the evaluation of December 29, 2005, which resulted in a C "Level of Care".

2) Directives provide that in Section 23 of the medical evaluation, points (one for each condition) are awarded for each item under "Medical Conditions/Symptoms". Evidence reveals the claimant also suffers dysphagia and arthritis creating 2 additional points.

3) Policy provides that points are awarded in Section 25 of the medical evaluation for eating as follows; 1 point for level 2 (with assistance) and 2 points for level 3 (total feed). Evidence reveals that the claimant is essentially spoon fed of "total feed". This creates an additional point in the level of care determination.

4) Policy requires a minimum total of 26 points to qualify for a care level of D. The agency acknowledged a total of 23 points and evidence offered during the hearing provided 3 additional points. A total of 26 points results in a D level of care (a maximum of 155 hours per month).

IX. DECISION:

The Agency's determination as set forth in the January 3, 2006 notification is **reversed**. The claimant continues to qualify for a D Level of Care.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

Entered this 30th Day of May, 2006

CLAIMANT'S RECOURSE TO ADMINISTRATIVE HEARING DECISION

For
Public Assistance Hearings,
Administrative Disqualification Hearings, and
Child Support Enforcement Hearings

A. CIRCUIT COURT

Upon a decision of a State Hearing Officer, the claimant will be advised he may bring a petition in the Circuit Court of Kanawha County within four months (4) from the date of the hearing decision.

The Court may grant an appeal and may determine anew all questions submitted to it on appeal from the decision or determination of the State Hearing Officer. In such appeals a certified copy of the hearing determination or decision is admissible or may constitute prima facie evidence of the hearing determination or decision. Furthermore, the decision of the circuit Court may be appealed by the client or petitioner to the Supreme Court of Appeals of the State of West Virginia.

B. THE UNITED STATE DEPARTMENT OF HEALTH AND HUMAN SERVICES

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the United States Department of Health and Human Services, Washington, D.C. 20201.

C. THE UNITED STATE DEPARTMENT OF AGRICULTURE

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the Department of Agriculture, Washington, D.C. 20250.



**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
HEARING DECISION TRANSMITTAL FORM**

DATE: August 10, 2007

TO: Libby Boggess, RN
Bureau for Senior Services

FROM: Ron Anglin, State Hearing Examiner

RE: NAME:
COUNTY: [REDACTED]
CATEGORY: Medicaid, Aged Disabled Waiver- Level of Care

ATTACHED IS THE DECISION AND SUMMARY ON THE ABOVE-NAMED CASE:

In favor of the claimant **(REVERSED)**

**PLEASE COMPLETE THE BOTTOM OF THIS FORM AND RETURN ONE
COPY TO THE STATE HEARING OFFICER**

- ☐ Date Hearing decision implemented _____
- ☐ Effective Date _____
- ☐ Amount of Retroactive Payment _____
- ☐ Case Continued No Action Necessary _____
- ☐ No Action Necessary _____
- ☐ Action Not Taken (Give Reason) _____

Date _____ Signature _____
(Agency Employee)

