



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

April 12, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 6, 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 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 **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
WVMI

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

_____,

Claimant,

v.

Action Number: 06-BOR-962

**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 12, 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 6, 2006 on a timely appeal filed January 25, 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], Claimant
[REDACTED], RN, Select In-Home Services
[REDACTED], Homemaker, Select In-Home Services
[REDACTED], owner, Select In-Home Services
[REDACTED], RN, Case Manager, CCIL
[REDACTED] (observing)
[REDACTED] RN, WVMI
Brian Holstein, Licensed Social Worker, 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 January 11, 2006
- D-3 Notice of Decision dated January 19, 2006

Claimant's Exhibits

- C-1 List of diagnoses from Dr. [REDACTED]
- C-2 Plan of Care/Homemaker Worksheet

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 January 11, 2006 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 16 points to documented medical

conditions that require nursing services and meets the criteria necessary to qualify as a LOC "B" (16 points)- eligible for three (3) hours per day or 93 hours per month of homemaker services.

- 3) The Claimant was sent notification on January 19, 2006 (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. [REDACTED] provided documentation from Dr. [REDACTED] (C-1) dated January 25, 2006 indicating that the Claimant has back, leg and hip pain as a result of osteoarthritis. Ms. [REDACTED] testified that the diagnosis of arthritis was not made available to her on the date of the assessment.

Wheeling- Ms. [REDACTED] testified that the Claimant is unable to wheel independently in her home due to a lack of arm strength. Ms. [REDACTED] testified that the Claimant's substitute homemaker wheeled her into the bathroom on the date of the assessment and the Claimant's Plan of Care (C-2) indicates that she requires assistance with wheeling. Ms. [REDACTED], the Claimant's regular homemaker, testified that she assists the Claimant with wheeling in the home.

Ms. [REDACTED] testified that the Claimant told her on the date of the assessment that she was capable of wheeling independently in her residence. Ms. [REDACTED] responded that she can move her wheelchair, but can only wheel it a short distance because she has arm pain due to a blockage. Ms. [REDACTED] testified that the Claimant told her she had traveled throughout her mobile home in her wheelchair and unplugged all of her telephones at one point. Ms. [REDACTED] responded that she had used her legs to maneuver the wheelchair and that she requires assistance most of the time.

- 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. The Claimant's physician provided documentation dated January 25, 2006 listing a diagnosis of osteoarthritis. Although Ms. [REDACTED] testified that this information had not been provided to her at the time of the assessment, the physician's documentation verifies that the condition was present in January 2006.
2. Two (2) additional points are awarded for wheeling. While the Claimant may be able to wheel herself for short distances in her residence, the Claimant and two witnesses testified that she requires assistance most of the time due to a lack of arm strength.
3. This brings the Claimant's total number of points to 19, which is indicative of a Level of Care "C" (18 to 25 points) 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 **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 12th Day of April, 2006.

**Pamela L. Hinzman
State Hearing Officer**