



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Joe Manchin III
Governor

Office of Inspector General
Board of Review
PO Box 29
Grafton WV 26354
September 13, 2007

Martha Yeager Walker
Secretary

Dear Mrs. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 1, 2007. 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 § 503.2.1)

The information submitted at the hearing revealed that as a result of your most recent medical evaluation the agency determined your point total as 22 or a C Level of Care (124 hours maximum per month). Evidence offered during the hearing failed to establish sufficient additional points to change your Level of Care.

It is the decision of the State Hearing Examiner to uphold the determination of the Agency as set forth in the April 12, 2007 notification.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Kay Ikerd, RN, Bureau of Senior Services (BoSS)
[REDACTED] West Virginia Medical Institute (WVMI)
[REDACTED] CM, Health Consultants Plus

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

Claimant,

Action Number 07-BOR-1195

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 September 13, 2007 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, 2007 on a timely appeal received by the Bureau of Senior Services April 26, 2007 and received by this examiner May 29, 2007.

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: All parties participated by phone

_____, claimant

_____, daughter to the claimant

_____, RN, Visiting Angels

_____, CM, Health Consultants Plus

_____, claimant's homemaker

Kay Ikerd RN, BoSS

_____, RN, WVMI

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 the claimant's Level of Care (hours of care) eligibility under the Medicaid Title XIX Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled and Community-Based Services Waiver Policy Manual § 503.2.1 (10-1-06)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

- A-1 A/D Waiver Manual § 503.2- 503.2.2
- A-2 WVMi Independent Review (PAS) completed 10/4/06
- A-3 Notification, 4/12/07
- A-4 RN Assessment, [REDACTED], 3/12/07
- A-5 Notification, 10/10/06
- A-6 Request For Level of Care Change, 4/6/07
- C-1 Statements Dr [REDACTED], 7/10/07 and 4/4/07
- C-2 Statements, _____ and _____, undated

VII. FINDINGS OF FACT:

1) A Request for Level of Care Change was initiated 4/6/07. Denial of this request was made in a notice dated 4/12/07. The notice indicated that a total of 22 points had been awarded (level C) which did not change the existing level of care. The claimant requested a hearing 4/21/07 which was received by BoSS 4/26/07 and received by this examiner May 29, 2007. A hearing was scheduled for and convened 8/1/07 by telephone conference.

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 October 4, 2006, the additional medical submitted with the request and testimony of the WVMi nurse, the Agency acknowledged a total of 22 points in determining a C "Level of Care". Documentation submitted did not increase the level of care. One point, the maximum, was given for pain. No wheelchair was used at the time of the review.

5) Testimony on behalf of the claimant reveals that the claimant now uses oxygen 24/7. Her pain has increased and she must now use wheelchair.

6) Aged/Disabled Home and Community-Based Waiver Manual 503.2.1(10-1-06):

There are four levels of care for homemaker services. Points will be determined as follows, based on the following sections of the PAS:

- #23 - Medical Conditions/Symptoms- 1 Point for each (can have total of 12 points) (must be based on medical evidence presented by appropriate medical professionals)
- #24 - Decubitus - 1 Point
- #25 - 1 point for b, c, or d.
- #26 - Functional levels
 - Level 1 – 0 points
 - Level 2 - 1 point for each item a through i
 - Level 3 - 2 points for each item a through m; i (walking) must be equal to or greater than Level 3 before points given for j (wheeling).
 - Level 4 - 1 point for a, 1 point for e, 1 point for f, 2 points for g through m
- #27- Professional and Technical Care Needs- 1 point for continuous oxygen
- #28 - Medication Administration- 1 point for b. or c.
- #34 - Dementia- 1 point if Alzheimer's or other dementia
- #35 - Prognosis- 1 point if terminal

Total number of points allowable is 44.

LEVELS OF CARE SERVICE LIMITS (503.2.2)

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 22 points by the agency as a result of the 4/6/07 request for a "Level of Care Change". This resulted in continuation of the previous C "Level of Care".

2) The areas of deficit contested by the claimant are pain, wheeling and continuous oxygen.

3) Directives provide that in Section 26 of the medical evaluation, a maximum of 2 points maybe awarded in the category of wheeling.

4) Policy provides that 1 point is awarded for the use of oxygen on a continuous basis.

5) One point had already been awarded by the agency in pain and that is the maximum which can be awarded.

6) Policy requires a minimum total of 26 points to qualify for the next level of care - D. The agency acknowledged a total of 22 points. Excluding any time of onset in wheeling and oxygen, only 3 additional points could be awarded resulting in a total of 25 which again results in a C Level of Care.

IX. DECISION:

The Agency's determination as set forth in the April 12, 2007 notification is **upheld**. Based on the information provided during the hearing, the claimant continues to qualify for a C Level of Care.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

Entered this 13th Day of September 2007

RON ANGLIN
State Hearing Examiner

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: March 6, 2008

TO: Kay Ikerd, RN
Bureau for Senior Services

FROM: Ron Anglin, State Hearing Examiner

RE: NAME: [REDACTED]
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 department (**UPHELD**)

After completion, return this form to Erika Young, Chairman, Bd. Of Review

**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)

