



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 970
Danville, WV 25053

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 22, 2007

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 24, 2007. 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 (ADW) Program, the number of homemaker service hours is determined based on the 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 503.2)

Information submitted at your hearing reveals that your condition at the time of your Pre Admission Screening qualifies for the degree of care and services offered under the Level "B" of Care under the ADW program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to decrease your Level of Care under the Aged/Disabled Waiver Program from Level C to Level B.

Sincerely,

Cheryl McKinney
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
CWVAS

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

_____,

Claimant,

v.

Action Number: 07-BOR-1336

**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 July 24, 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 July 24, 2007 on a timely appeal filed May 7, 2007.

It should be noted that the Claimant's benefits have 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:

Claimant's Witnesses:

[REDACTED], Claimant
[REDACTED] Case Mgr. CWVAS
[REDACTED] RN, CWVAS
[REDACTED] Homemaker, observing

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services, BoSS, by speakerphone
[REDACTED], RN, WVMI, by speakerphone

Presiding at the hearing 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 503.2, 503.2.1 and 503.2.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 503.2, 503.2.1, 503.2.2
- D-2 Pre-Admission Screening (PAS) assessment completed on April 9, 2007
- D-3 Eligibility Determination dated April 9, 2007
- D-3 Notice of decision dated April 20, 2007
- D-4 Copy of Request for Hearing dated April 25, 2007

Claimant's Exhibits:

- C-1 Copy of "Plan of Care" for period 4-9-07 through 10-9-07

VII. FINDINGS OF FACT:

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter ADW, was undergoing an annual reevaluation to verify continued medical eligibility in April 2007.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (PAS) Pre-Admission Screening form (D-2) on April 9, 2007 and determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse indicated on the form the Claimant was listed as having high blood pressure, elevated lipids, severe degenerative joint disease, rheumatoid arthritis, impotence of organic origin, and decreased ambulation secondary to DJD. Also listed was a right hip replacement three (3) years ago.
- 3) Four (4) points were assessed for Medical Conditions and Symptoms. One (1) point was assessed for ability to vacate a building. Ten (10) points were assessed in the area of functional abilities in the home. A total of fifteen (15) points were assessed during the screening.
- 4) Witnesses for the Claimant raised issues in the following areas:

Transferring, which is under Functional Levels: The Claimant was assessed as needing supervised/assistive device, and given one (1) point in this area. The Case Manager testified that she was present when the (PAS) Pre-Admission Screening (D-2) was completed, and recalls that the Claimant indicated that he did need assistance getting out of bed. The Claimant testified that he always needs assistance in the morning with transferring, but can maneuver with less assistance as the day goes on. The PAS in question was completed at around noon. The Case Management Agency Registered Nurse indicated she was present when the evaluation was completed as well, and presented a copy of a Case Plan (C-1) she completed that same day indicating the Claimant needed physical assistance with transferring. The WVMI nurse indicated on the PAS that the Claimant demonstrated getting to a standing position by pushing off the arms of a chair and used a can, and that the homemaker watches him get out of bed. Also indicated on the PAS was the Claimant's diagnosis of decreased ambulation due to severe Degenerative Joint Disease.

Medication Administration, which is under question number twenty eight (28): The Claimant was assessed as being able to administer his own medication. The WVMI nurse noted on the PAS (D-2) that "he reports he removes his medications from bottles and takes them as scheduled." The Case Management Agency Registered Nurse indicated on her Case Plan (C-1) that the Claimant must be prompted to take his medication, and stated that his family helps with this in the evenings and weekends. The Claimant testified that he doesn't look at his watch. He takes his medicine when he eats, and that he needs reminding at times to take his medicine. The Claimant is prescribed sixteen (16) different medications (D-2) with varying schedules.

Dyspnea, which is under Medical Conditions/Symptoms: The Claimant was assessed no points in this area. The WVMI nurse indicated on the PAS (D-2) that the Claimant does not have a diagnosis or prescription for this condition. The Case Manager reports

that the Claimant was short of breath during the hearing, but could not offer any evidence related to his condition during the time the PAS was completed in April 2007.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2.1 and 503.2.2 (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- 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- Decubitis- 1 point

#25- 1 point for b., c., or d.

#26 Functional abilities

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 are 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

#34- Prognosis- 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 assessment tool.
- 2) The Claimant received 15 points on a PAS completed by WVMi in April 2007 in conjunction with an annual evaluation. For the previous level of care, the Claimant would need at least 18 points.
- 3) Evidence and testimony presented during the hearing supports the need for an additional one (1) point to be awarded for Transferring due to his need of physical assistance daily in this area. Evidence and testimony also support the need for an additional one (1) point to be awarded for Medication Administration due to the Claimant's need to be reminded to take his numerous medications at the prescribed times.
- 4) The total amount of points assessed amount to seventeen (17), and support the finding of Level "B" for this Claimant.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** 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 22nd Day of August 2007

**Cheryl McKinney
State Hearing Officer**