



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 24, 2007

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 8, 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,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

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

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

_____,

Claimant,

v.

Action Number: 07-BOR-1422

**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 August 8, 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 8, 2007 on a timely appeal filed May 21, 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 Manager, Potomac Highland Support Services (PHSS)

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services, BoSS, by speakerphone

[REDACTED], RN, WVMI, by speakerphone

Presiding at the hearing was Sharon K. Yoho, 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 24, 2007
- D-3 Eligibility Determination dated April 24, 2007
- D-4 Notice of reduction in benefits dated May 8, 2007

Claimant's Exhibits:

- C-1 Letter from Dr. [REDACTED] dated June 11, 2007
- C-2 Note from Dr. [REDACTED] dated May 18, 2007

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 (D-2) on April 24, 2007 and determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse assigned 16 points in her evaluation of the level of care the claimant requires.

- 3) Five points were assigned for Medical Conditions and Symptoms. One point was assessed for vacating in the event of an emergency. Nine points were assessed in the area of functional abilities in the home and one point for medication administration.
- 4) Witnesses for the Claimant raised issues in the area of dyspnea and arthritis, which are under Medical Conditions and Symptoms. The evaluating nurse was not provided with diagnosis information at the time of the PAS for either of these conditions. Exhibit C-1, letter from the claimant's physician states that the claimant has significant shortness of breath with just a minimal amount of activity. This letter of June 11, 2007 did not support that his condition existed at the end of April when the PAS was completed. Exhibit C-2, a note from a physician, indicated that the visiting nurse should have evaluated for arthritis pain in the back, hips and knees due to osteo arthritis. This note was dated May 18, 2007 and referred to the evaluation completed on April 24, 2007.
- 5) Issues were raised regarding the claimant's inability to dress himself. The evaluating nurse assigned one point for the claimant needing physical assistance to dress. He is sometimes able to put on a shirt by rolling around on his bed and he is usually able to lift his arms to assist someone in putting on his shirt.
- 6) 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

7)	Aged Disabled Waiver Manual Chapter 500, Attachment 14:			
		Level 1	Level 2	Level 3
	Dressing	Self/Prompting	Physical Assistance	Total Care

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 16 points on a PAS completed by WVMi in April 2007 in conjunction with an annual reevaluation. For the previous level of care, "C" the claimant would require at least 18 points.
- 3) Evidence and testimony presented during the hearing, did support the belief that the Claimant had a condition of arthritis at the time of the PAS. His physician issued this diagnosis on May 18, 2007 and indicated it existed at the time of the PAS. It was not clear whether the diagnosis of dyspnea was present at the time of the PAS and therefore cannot be considered. Testimony and evidence did not support that this claimant is total care for dressing as he is able to participate and on some days can put his shirt on by rolling on his bed. The nurse properly evaluated him as needing physical assistance for dressing.
- 4) The Claimant should have been assessed 17 points in April, which is also indicative of a Level of Care "B" and renders the Claimant eligible for (93) hours per month of homemaker services.

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 24th Day of August 2007.

Sharon K. Yoho
State Hearing Officer