



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

October 1, 2007



Dear Ms. 

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 12, 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 C 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 D to Level C.

Sincerely,

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

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


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

█
Claimant,

v.

Action Number: 07-BOR-1526

**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 September 12, 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 originally scheduled for August 1, 2007, rescheduled for August 20, 2007. This fair hearing was then scheduled and convened on September 12, 2007 on a timely appeal filed June 4, 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:

██████████ Claimant
██████████, Case Manager, ██████████
██████████, Homemaker RN, ██████████
██████████, Homemaker, ██████████

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services, BoSS, by speakerphone
██████████, 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 30, 2007
- D-3 Eligibility Determination dated April 30, 2007
- D-4 Notice of reduction in benefits dated May 22, 2007

Claimant's Exhibits:

- C-1 Letter from Dr. ██████████ and note on prescription pad from Dr. ██████████

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 Pre-Admission Screening (PAS) assessment (D-2) on April 30, 2007 and determined that the Claimant

continues to meet the medical eligibility criteria. The WVMI nurse assigned 25 points in her evaluation of the level of care the claimant requires.

- 3) Nine points were assigned for Medical Conditions and Symptoms. One point was assessed for vacating in the event of an emergency. Thirteen points were assessed in the area of functional abilities in the home, one point for medication administration and one point for Dementia / Alzheimer's related condition.
- 4) Witnesses for the Claimant raised issues in the area of contractures, which is under Medical Conditions and Symptoms. The evaluating nurse was not provided with a diagnosis of contractures at the time of the PAS nor was she advised of any contracture issues. The claimant's Homemaker RN, Homemaker and daughter were present during the assessment.
- 5) The claimant has a condition of overlapping toes. Witnesses for the claimant testified that this condition is due to contractures. Exhibit C-1, letter from the claimant's physician states that the claimant has overlapping toes **suggestive** (emphasis added) of contractures. Also in exhibit C-1 is a note from a Dr. of Podiatry written on a prescription pad. This note states that the claimant has overlapping toes that make it difficult for her to walk.
- 6) Witnesses for the Department indicate that a diagnosis of overlapping toes would not confirm a diagnosis of contractures. They contend that the term suggestive in exhibit C-1 would indicate that the physician believed that this would be something that they might want to follow up on before issuing a diagnosis.
- 7) 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 25 points on a PAS completed by WVMI in April 2007 in conjunction with an annual reevaluation. For the previous level of care, "D" the claimant would require at least 26 points.
- 3) Evidence and testimony presented during the hearing, did not support the belief that the Claimant had contractures at the time of the PAS. Exhibit C-1 shows that two different physicians were hesitant to issue a firm diagnosis of contractures.
- 4) The Department correctly assessed 25 points in April, which is indicative of a Level of Care "C" and renders the Claimant eligible for (124) 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 1st Day of October 2007.

**Sharon K. Yoho
State Hearing Officer**