



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

January 31, 2008



Dear Ms. [REDACTED]:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 30, 2008. 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 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 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 proposal 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
BoSS
[REDACTED]

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

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Claimant,

v.

Action Number: 07-BOR-2113

**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 January 31, 2008 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 January 30, 2008 on a timely appeal filed September 11, 2007. The hearing was originally scheduled for January 3, 2008, but was rescheduled at the request of the Claimant.

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:

[REDACTED] Claimant
[REDACTED], Case Manager, [REDACTED]
[REDACTED] Homemaker, [REDACTED]
Kay Ikerd, RN, Bureau of Senior Services
[REDACTED], RN, West Virginia Medical Institute

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

All parties participated telephonically.

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 August 13, 2007
- D-3 Notice of Decision dated August 21, 2007
- D-4 Hearing request

VII. FINDINGS OF FACT:

- 1) The Claimant, a recipient of Aged/Disabled Waiver (ADW) Medicaid benefits, was undergoing an annual reevaluation to verify continued medical eligibility.
- 2) The West Virginia Medical Institute (WVMI) Nurse completed a medical assessment (D-2) on August 13, 2007 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 Level of Care "B" - eligible for three (3) hours per day or 93 hours per month of homemaker services. It should be noted that the Claimant previously qualified as a Level of Care "C"- eligible for four (4) hours per day or 124 hours per month of homemaker services.

- 3) The Claimant was sent notification on August 21, 2007 (D-3) advising her of the proposed reduction in homemaker service hours.
- 4) Witnesses for the Claimant contended that additional points should be awarded in the following areas:

Physical assistance with walking and transferring- Testimony reveals that the [REDACTED] homemaker has a key to the Claimant's residence and the homemaker normally arrives at the home before the Claimant gets out of bed in the morning. Both the Claimant and the homemaker testified that the homemaker regularly provides physical assistance to the Claimant in transferring from the bed and walking in the residence. The homemaker testified that she comes to the Claimant's residence Monday through Saturday and the Claimant's granddaughter assists the Claimant on Sundays. At times the Claimant can get out of bed unassisted, however, the homemaker testified that she has been assisting the Claimant in this manner for several months. The Claimant described a fall she had in July 2007. She indicated that she fell in her living room and could not get up off the floor. She testified that she crawled from the living room to the hallway and had to shake the telephone cord until the phone fell to the floor so that she could call for help.

The WVM Nurse testified that the Claimant ambulated with a walker on the date of the PAS assessment. The Claimant did not lose her balance, but the nurse recorded that the Claimant's right leg "tended to give out" with weight placement. The nurse testified that the Claimant had indicated she uses handrails to assist her on and off the commode and that she uses furniture to assist her with transfers. The Claimant had stated that she uses a lift chair mainly at night when she has problems with her legs. The nurse testified that the Claimant was able to push herself out of a lawn chair on the date of the assessment and took hold of her walker for support.

It was noted on the PAS that the Claimant's homemaker physically assists her with transfers in and out of the bathtub. The PAS indicates the Claimant reported pain and numbness in her right leg during ambulation and that the Claimant has had three falls as a result of her condition.

The nurse testified that the Claimant's homemaker was present during the assessment, but did not report assisting the Claimant with walking and transfers. The homemaker contended that she did report this information during the evaluation.

The PAS lists several diagnoses for the Claimant including Chronic Pulmonary Obstructive Disorder, hypertension, diabetes, hypercholesterolemia and peripheral neuropathy.

Based on information presented during the hearing, the Claimant is awarded one (1) additional point for physical assistance with walking and one (1) additional point for physical assistance with transferring. Based on the Claimant's medical condition and leg pain/numbness, it is reasonable to believe that she receives physical assistance with ambulation and transfers at times.

Occasional incontinence of bowel- The Claimant reported she is occasionally incontinent of bowel and that this problem has worsened. The homemaker testified that the Claimant is incontinent of bowel at least two times per week.

The WVMi nurse testified that the Claimant had reported she is continent of bowel the majority of the time, but has occasional incontinence when she has diarrhea. She had stated this was not a weekly occurrence.

One (1) additional point is awarded for occasional bowel incontinence as the Claimant had reported during the assessment that she is occasionally unable to control her evacuative functions.

- 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 was awarded 16 points as the result of a PAS completed by WVMi in August 2007 in conjunction with her annual medical evaluation.

- 3) Three (3) additional points are awarded to the Claimant as a result of testimony presented during the hearing.
- 4) The Claimant's total number of points is, therefore, 19, which is indicative of a Level of Care "C" 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 31st Day of January, 2008.

**Pamela L. Hinzman
State Hearing Officer**