



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

March 26, 2007



Dear Ms. 

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 27, 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 WVM. (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 **reverse** the proposal of the Department to decrease your Level of Care under the Aged/Disabled Waiver Program from Level C to Level B. The Claimant is awarded an additional one (1) point for angina, giving the claimant a total of eighteen (18) points, and Level C.

Sincerely,

Cheryl McKinney
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Libby Boggess, BOSS
WVMI


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

██████████
Claimant,

v.

Action Number: 06-BOR-3370

**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 February 27, 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 February 27, 2007 on a timely appeal filed December 4, 2006.

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], [REDACTED] Case Manager
[REDACTED], RN Homemaker
[REDACTED], Homemaker

Department's Witnesses:

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

Observing were Joann Ranson, Mary Beth Hamilton, and Cindy Knighten, BOSS Nurses

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 (PAS) assessment dated October 3, 2006
- D-3 Eligibility Determination dated November 7, 2006
- D-4 Various supporting forms (4 pages)

Claimant's Exhibits:

- C-1 Medical Diagnosis dated February 19, 2007
- C-2 Copy of Medical Journal indicating uses for Nitroglycerin

VII. FINDINGS OF FACT:

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter ADW, 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 October 3, 2006 and determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse assigned 17 points in her evaluation of the level of care the claimant requires.
- 3) Six (6) points were assigned for Medical Conditions and Symptoms. One (1) point was assessed for vacating in the event of an emergency. Seven (10) points were assessed in the area of functional abilities in the home.
- 4) Witnesses for the Claimant raised issues in the following areas:

Angina, which is under Medical Conditions/Symptoms: The WVMI nurse assessed the claimant as not having angina and the claimant was not given a point for this condition. The nurse testified that during the assessment she asked the claimant if she experienced chest pain and the claimant responded "no". The claimant takes Digoxin and the nurse recorded that the claimant indicated she took this for irregular heart beat. Testimony from the claimant during the hearing indicated she was confused as to the definition of "angina". The claimant testified that she has chest pain regularly and goes to bed to rest when it comes on. The claimant described this as tightness in her chest area, rather than "chest pain". The claimant presented evidence (C-1) from her physician in the form of a diagnosis dated February 19, 2007 indicating she has angina and dysphasia. Testimony from the RN Homemaker indicated that she thought the claimant would be given credit for having angina since she is on nitro glycerin medication for angina. Evidence presented during the hearing (C-2) provides that nitroglycerin is used to treat "chronic stable angina pectoris, prophylaxis of angina pain, CHF associated with acute MI, controlled hypotension in surgical procedures".

Dysphasia, which is under Medical Conditions/Symptoms: The WVMI nurse assessed the claimant as not having dysphasia and she was not given a point for this condition. The nurse indicated on the assessment that the claimant stated she did not need for her foods to be ground or liquids thickened. The claimant testified that she does have trouble swallowing foods and described it as "food sticks, and I get choked sometimes". She indicated she does take medication for this but was unable to provide documentation or even the name of the medication. The WVMI nurse had indicated the claimant mentioned she did take medication for a sore throat. The Homemaker testified that she has observed the claimant having difficulty swallowing food for some time. Evidence presented during the hearing (C-1) indicates the claimant has been diagnosed with dysphasia as of February 19, 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 17 points on a PAS completed by WVMi in October 2006 in conjunction with an annual reevaluation. For the next higher level of care of "C", the claimant would require one (1) additional point.
- 3) Clear and convincing evidence and testimony was presented during the hearing to support the need for an assessment of one additional deficit and point for angina, bringing the total available points to eighteen (18).
- 4) The Claimant's total number of points is eighteen (18), 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 **reverse** the Agency's proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled, Title XIX (HCB) Waiver Program, and award an additional deficit and one (1) point for angina, giving the claimant a total of eighteen points (18), and level "C".

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 26rd Day of March 2007.

**Cheryl McKinney
State Hearing Officer**