



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

May 1, 2007

Dear Mrs. [REDACTED]

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 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 D 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 D to Level C.

Sincerely,

Cheryl McKinney
State Hearing Officer
Member, State Board of Review

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

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

██████████
Claimant,

v.

Action Number: 06-BOR-3371

**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's daughter
[REDACTED], Case Manager,
[REDACTED], RN Homemaker, [REDACTED]

Department's Witnesses:

Jenny Sutherland, Bureau of Senior Services, BoSS, by speakerphone
[REDACTED], WVMI Nurse, 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 October 23, 2006
- D-3 Eligibility Determination dated October 23, 2006
- D-4 Notice of reduction in benefits dated November 17, 2006

VII. FINDINGS OF FACT:

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter ADW, was undergoing an annual reevaluation to determine continued medical eligibility in October 2006. The Claimant was 97 years of age with a diagnosis of dementia, and is cared for twenty four (24) hours per day.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on October 23, 2006 and determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse assigned 24 points in her evaluation of the level of care the claimant requires.

- 3) Three (3) points were assigned for Medical Conditions and Symptoms. One (1) point was assessed for vacating in the event of an emergency. Eighteen (18) points were assessed in the area of functional abilities in the home. One (1) point was assessed for medication administration. One (1) point was assessed for the diagnosis of Dementia.

- 4) The Claimant raised issues in the following areas:

Orientation, which is under functional abilities: The evaluating nurse assessed one point (1) in this area for “intermittent disorientation”. Nurse’s comments on the October 2006 Pre-Admission Screening form include “the claimant was sitting on couch eating snack mix, repeats same words frequently. Member does not respond appropriately to questions throughout assessment.” The case manager testified that in the four (4) years she has worked with the claimant she has never been able to carry on conversation, or to have claimant explain where she is, the date, or the time.

Communication, which is under functional abilities: The evaluating nurse assessed zero (0) points in this area and indicated the claimants speech was clear and she was able to communicate her needs. However, in written notes on the October 2006 Pre-Admission Screening form she recorded the following: Observed homemaker and daughter giving member drinks of water with her snack, member does not ask for drink. The evaluating nurse testified “clarity of speech” was used to evaluate communication.

- 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 24 points on a PAS completed by WVMi in October 2006 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 support the need for additional points to be awarded to the Claimant under functional abilities. Evidence provides that Orientation is at a level three (3), or totally disoriented, which awards Claimant two (2) points in this area. This finding will award (1) additional point in the area of Orientation, since the evaluating nurse assessed only one (1) point in her evaluation. Evidence also shows that Communication is at a level four (4), or inappropriate/none. Although the claimant's speech is clear, it is obvious she is unable to communicate her thoughts and needs. Level four (4) will award the Claimant two (2) points in the area of Communication, giving the Claimant an additional two (2) points, since the evaluating nurse assessed zero (0) points in this area.
- 4) The Claimant's total number of points should have been 27, which is indicative of a Level of Care "D" and renders the Claimant eligible for her previously determined (155) 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.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 1st Day of May 2007.

**Cheryl McKinney
State Hearing Officer**