



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

May 24, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 9, 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,

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

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

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

_____, Claimant,

v. **Action Number: 07-BOR-914**

**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 May 9, 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 May 9, 2007 on a timely appeal filed March 12, 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's daughter
[REDACTED], Case Manager, Potomac Highlands Support Services, (PHSS)
[REDACTED] Homemaker RN, [REDACTED] Council on Aging

Department's Witnesses:

Jennie Sutherland, 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, 503.2.2 and Attachment 14

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 February 8, 2007
- D-3 Eligibility Determination dated February 8, 2007
- D-4 Notice of reduction in benefits dated February 26, 2007

Claimant's Exhibits:

- C-1 Note from Dr. [REDACTED] MD, dated April 19, 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 February, 2007.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on February 8, 2007 in the Claimant's home with the Claimant's daughter present for part of the assessment. The daughter had to leave before the assessment was

complete. The Claimant's homemaker was present for the full assessment. The Claimant was asleep and did not participate. The evaluating nurse 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. This falls in the Level C of care.

3) Six points were assigned for Medical Conditions and Symptoms. One point was assessed for vacating in the event of an emergency. Fifteen points were assessed in the area of functional abilities in the home. One point was assessed for Medication and one point for Professional & Technical Care.

4) Witnesses for the Claimant raised issues in the following areas:

Bathing, which is under Functional abilities in the home: At the time of the February assessment, the Claimant's daughter told the evaluating nurse that bathing takes place while the claimant sits on the toilet. She told the nurse that sometimes she hands her mother a wash cloth so she can wash her own face and her left arm. Testimony at the hearing indicates that the Claimant can assist in her bathing on some days.

Grooming, The Claimant's daughter advised the nurse that her mother could brush her own lower teeth if she is positioned at the sink. She can brush her teeth while leaning on the sink. Her hair is done at the salon. Her toenails are cut at the podiatrist.

Dressing, The Claimant is not able to assist in dressing. The evaluating nurse misunderstood information given to her at the PAS. She understood that the claimant could raise her right arm up and that if on pain medication, she could also raise her left arm a little. Testimony supports that the Claimant can never raise her left arm and can only raise her right arm very little if she is on pain medication. The nurse assessed dressing with a level 2 due to her belief that she could raise her right arm up to put it in a sleeve. The claimant is not able to put on even one article of clothing without physical assistance and she is not able to participate in dressing.

Communication, The Claimant suffers from the symptoms of a stroke and her daughter reports that she is not always able to make her needs known. When she is asked if she wants milk or juice, she will not respond and the decision is left to others to make for her. Her speech is reported to be filled with pauses and her forgetfulness hampers her ability to make her needs known.

5) Letter dated April 19, 2007 (Exhibit C-1) from the Claimant's doctor states, that the Claimant has become totally dependent on others for all of her personal care.

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 |
|------------------|----------------|-------------------------|-----------------------|
| b. Bathing | Self/Prompting | Physical Assistance | Total Care |
| c. Dressing | Self/Prompting | Physical Assistance | Total Care |
| d. Grooming | Self/Prompting | Physical Assistance | Total Care |
| m. Communication | Not Impaired | Impaired/Understandable | Understandable w aids |

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 February 2007 in conjunction with an annual reevaluation. For the previous level of care, "D" the claimant would require two additional points.
- 3) Evidence and testimony presented during the hearing, did not support that the evaluating nurse should have awarded additional points in the areas of bathing and grooming. She is able to participate in these areas. She is able to wash her own face if handed a wash cloth. She is able to brush her own teeth while resting her arms on the sink. The statement from her doctor regarding her being totally dependent on others for personal care is not specific enough to warrant additional points in these two areas.
- 4) Testimony did support the doctor's claim of his patient being totally dependent on others for dressing. This Claimant is not even able to lift her arm up far enough to put her arm into a sleeve. Her caregivers have to pick both of her arms up and place them in her sleeves. The ability that this Claimant has to slightly lift her right arm at times is determined by this Hearing Officer to be too limited to constitute participation in dressing. Two points should have been awarded in this area.

- 5) Testimony offered at this hearing by the Claimant's daughter and case manager supports that the Claimant's communication is impaired and often times not understandable. The evaluating nurse notes in her report that it was reported to her that the Claimant could speak and that no problems were reported with communication. While it may be true that the Claimant can speak words, it is clear that she does have difficulty making her needs known. Policy in Attachment 14 states, under communication, if the person has impaired speech but it is understandable, a level 2 should be assessed with one point given. This Claimant is reported to have impaired speech and is even sometimes not understood. One point should have been assessed in this area.
- 6) It is unfortunate that this client was not available for the evaluating nurse to observe during the PAS and was also not available for the hearing. Had the nurse been able to observe the Claimant in her home she may have found it necessary to assess a point for dressing as well as for communication.
- 7) The evaluating nurse should have assessed two additional points for a total number of twenty six (26) points, which is indicative of a Level of Care "D" and renders the Claimant eligible for (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 24th Day of May 2007.

Sharon K. Yoho
State Hearing Officer