



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

March 25, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 24, 2009. 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 WVM. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual 501.3)

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
WVMI
COWAS

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

-----,

Claimant,

v.

Action Number: 09-BOR-580

**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 March 25, 2009 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 by telephone on March 24, 2009 on a timely appeal filed January 6, 2009.

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 brother
- , Claimant's sister-in-law
- , RN, Central West Virginia Aging Services
- , Case Manager, Central West Virginia Aging Services
- Kay Ikerd, RN, Bureau of Senior Services
- , 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.

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 501.3.2.1 and 501.3.2.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 501.3.2.1 and 501.3.2.2
- D-2 Pre-Admission Screening (PAS) assessment completed on October 22, 2008
- D-3 Notice of Decision dated October 30, 2008
- D-4 Fair Hearing Request
- D-5 Medical diagnoses information from Dr. [REDACTED]

VII. FINDINGS OF FACT:

- 1) The Claimant, a recipient of Aged/Disabled Waiver (ADW) Medicaid benefits, underwent an annual reevaluation to verify continued medical eligibility for the program.
- 2) The West Virginia Medical Institute (WVMI) Nurse completed a medical assessment (D-2) on October 22, 2008 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 October 30, 2008 (D-3) advising her of the proposed reduction in homemaker service hours.
- 4) The Claimant’s witnesses contended that additional points should be awarded for the medical diagnoses of *significant arthritis and dysphagia*. The Claimant’s Case Manager sent Exhibit D-5 to the Department via facsimile transmission on March 3, 2009, but noted that the information was provided to her in November 2008. The documentation, provided by Dr. [REDACTED] of [REDACTED] Medical Center, Inc. and dated November 26, 2008, indicates that the Claimant has a history of chronic low back pain as the result of arthritis, and dysphagia (due to a history of intubation). The WVMi Nurse testified that the Claimant - on the date of the PAS - had reported having arthritis in her back, but said she stopped taking arthritis treatment due to side effects. In addition, the Claimant reported having daily problems with swallowing/frequent choking. The Claimant had indicated that her physician believed the problems resulted from scar tissue formed from intubation.

The Bureau of Senior Services Nurse testified that WVMi did not have official diagnoses of arthritis and dysphagia at the time the PAS was completed, therefore, no points could be awarded in this area.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Sections 501.3.2.1 and 501.3.2.2 (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)
- #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 obtained on the PAS assessment tool.
- 2) The Claimant was awarded 16 points as the result of a PAS completed by WVMI in October 2008 in conjunction with her annual medical evaluation.
- 3) As a result of information presented during the hearing, one (1) additional point is awarded to the Claimant for significant arthritis and one (1) additional point is awarded for dysphagia. The Claimant reported these medical conditions at the time of the assessment and her physician has since confirmed this information. In addition, policy does not specifically require that a written diagnosis be provided by a physician before points can be awarded in the Medical Conditions/Symptoms portion of the PAS.
- 4) The Claimant's total number of points has been increased to 18, which is indicative of a Level of Care "C" (18 to 25 points).

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 25th Day of March, 2009.

**Pamela L. Hinzman
State Hearing Officer**