



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

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D
Cabinet Secretary

April 8, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 7, 2011. 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 WVMH. (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 "B" rating. As a result, you are eligible to receive three (3) hours per day or 93 hours per month of homemaker services.

It is the decision of the State Hearing Officer to **uphold** 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
WVMH
CWVAS

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

-----,

Claimant,

v.

Action Number: 11-BOR-635

**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 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 telephonically on April 7, 2011 on a timely appeal filed February 2, 2011.

It should be noted that the Claimant's benefits have continued pending a hearing decision.

II. PROGRAM PURPOSE:

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

-----, RN, (b)(6) Home Health

-----, Case Manager, (b)(6) Services

-----, Direct Care Giver, (b)(6)

Brian Holstine, Licensed Social Worker, Bureau of Senior Services
Paula Clark, 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. QUESTION TO BE DECIDED:

The question 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 January 18, 2011
- D-3 Notice of Decision dated February 4, 2011

Claimant's Exhibits:

- C-1 Letter from [REDACTED] O.D., dated February 18, 2011
- C-2 Information from [REDACTED] M.D., dated February 1, 2011
- C-3 Copy of January 18, 2011 PAS with written notations from Claimant and additional medical documentation

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) West Virginia Medical Institute (WVMI) Registered Nurse Paula Clark completed a Pre-Admission Screening (PAS) medical assessment (D-2) on January 18, 2011 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 17 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 for 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 February 4, 2011 (D-3) advising her of the proposed reduction in homemaker service hours.

4) The Claimant and her representatives contended that the Claimant should receive additional points for occasional incontinence of bowel and impaired/uncorrectable vision. [REDACTED] Health Registered Nurse ----- testified that the Claimant suffers from Irritable Bowel Syndrome and has incontinence of bowel four to five times per week. The Claimant testified that she also has ulcerative colitis and other colon/esophagus problems. The Claimant indicated that she did not inform the WVM Nurse of her bowel incontinence during the assessment because she finds the issue hard to discuss. The WVM Nurse testified that the Claimant denied bowel incontinence during the assessment, therefore, no points were awarded in this area.

-----contended that the Claimant's vision impairment is not correctable and provided documentation from [REDACTED] O.D., dated February 18, 2011 (C-1) and information from [REDACTED] M.D., (C-2) dated February 1, 2011. Dr. [REDACTED]'s letter indicates that the Claimant has chronic ocular surface disease and keratitis sicca, as well as numerous recurrent erosions of the corneal epithelium of both eyes. The letter states that the Claimant is allergic to the most effective medications for treating her eye condition and also addresses her visual acuity. Dr. [REDACTED] wrote that the Claimant is extremely light sensitive. Dr. [REDACTED]'s documentation indicates that the Claimant has uncorrectable vision impairment and must use a magnifying glass and her eyeglasses to read small print. The Claimant testified that her vision problems are worse in the afternoon and that she uses dark sunglasses in her home to watch television. The WVM Nurse testified that the Claimant reported using a magnifying glass to read small print. The WVM Nurse stated that she received information from Dr. [REDACTED] on February 1, 2011, but did not change her PAS findings in regard to vision because the Claimant can read small print with glasses and a magnifying glass. Therefore, her vision is considered impaired/correctable.

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 17 points as the result of a PAS completed by WVMi in November 2011 in conjunction with her annual medical evaluation.
- 3) As a result of information presented during the hearing, no additional points are awarded to the Claimant. The Claimant denied bowel incontinence during the assessment and demonstrated functional vision in her home.
- 4) The Claimant's total number of points remains at 17, rendering her eligible to receive a Level "B" Level of Care.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** 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 8th Day of April, 2011.

**Pamela L. Hinzman
State Hearing Officer**