



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
235 Barrett Street
Grafton WV 26354
April 11, 2005

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

Dear Mrs. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 9, 2005. Your hearing request was based on the Department of Health and Human Resources' determination concerning Level of Care (monthly hours of care services) under the Medicaid Title XIX (Home & Community-Based) Waiver 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.

One of these regulations specifies that for the Aged/Disabled Waiver Program, hours of service are determined based on an evaluation of the Pre-Admission Screening Form (PAS). A Level of Care is determined by a point system. Points are derived from medical conditions and deficits set forth in the PAS. Program services are limited to a maximum number of units/hours that are determined by the PAS which is completed, reviewed and approved by WVMI. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual 570.1- 570.1. d)

The information which was submitted at the hearing revealed that as a result of the August 9, 2004 medical evaluation (PAS), the agency determined your Level of Care as **C** or 124 hours maximum per month. Testimony was provided concerning possible additional deficits or conditions.

It is the decision of the State Hearing Officer to **uphold** the determination of the Agency as set forth in the August 12, 2004 notification. The agency's determination that you qualify for a C Level of Care was correct and in compliance with policy.

Sincerely,

Ron Anglin
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Libby Boggess, RN, Bureau of Senior Services
Oretta Keeney, West Virginia Medical Institute
[REDACTED] CCS

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

Salem WV 26426

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on April 11, 2005 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 originally convened on March 9, 2005 on a timely appeal received by the Board of Review August 25, 2004. It should be noted that services under the Medicaid Title XIX Waiver (HCB) Program have continued at the previous level. All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE:

The Program entitled Medicaid Title XIX Waiver (HCB) 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

_____, spouse

_____, CM/CCS

_____, RN/CCS

_____, homemaker

Kay Ikerd, RN, BoSS (by phone)

Kem Honaker, RN, WVMI (by phone)

Presiding at the hearing was Ron Anglin, 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 their determination concerning Level of Care (hours of care) under the Medicaid Title XIX Waiver (HCB) Program?

V. APPLICABLE POLICY:

Aged/Disabled and Community-Based Services Waiver Policy Manual ' 570.1- 570.1, d.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

- E-1 A/D Waiver Manual 570.1, c- 520.3
- E-2 WVMI Independent Review (PAS) completed 8/9/04
- E-3 Notification, 8/12/05

VII. FINDINGS OF FACT:

(1) The claimant is an active recipient of Aged/Disabled Home and Community-Based Waiver Services. An annual reevaluation, (E-2) was completed by WVMI on August 9, 2004. As a result of this review, WVMI determined the claimant=s Level of Care to be level C or 124 hours. Notification was provided August 12, 2004 (E-3). A hearing was requested by the claimant dated August 20, 2004 and received by the agency August 23, 2004 and by the State Hearing Officer November 22, 2004. This hearing was originally scheduled for January 21, 2005 then rescheduled at the agency's request and convened March 9, 2005.

(2) Kay Ikerd from the Bureau of Senior Services explained agency policy concerning Level of Care determinations. Aphasia is the inability to communicate.

(3) Kem Honaker from the West Virginia Medical Institute testified that the assessment (E-2) was reviewed and claimant received points as follows: Item # 23 reveals that the claimant has - Angina –at rest and exertion, Dyspnea, Arthritis, Dysphagia, Pain, mental disorder and other (rt side weakness) for 8 points in that block. Item #25- physically unable to vacate - 1 point. Item #26 reveals 13 points for – Eating (1), Bathing (1), Dressing (1), Grooming (1), Continence bowel (2) and bladder (2), Orientation (1), Transferring (2), and Walking (2). Item #27- continuous oxygen- 1 point. Item #28 1 point for prompting/super with medication. Item #34- 1 point – Alzheimer's. Total points 25 level C, 124 hours per month.

(4) [REDACTED] case manager from Catholic Community Services, testified that she feels Aphasia should have been noted. The claimant sometimes has slurred speech and has trouble expressing herself. Her right arm is frozen she cannot raise it. Due to weakness sometimes she cannot wash her face and hands. She is not able on most occasions to cut her nails. Feels that in bathing and grooming she is leaning to total care.

(5) [REDACTED] testified that the claimant is disoriented more often than she is oriented.

VIII. CONCLUSIONS OF LAW:

(1) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 570.1 and 570.1.d:

There will be four levels of care for clients of ADW Homemaker services. Points will be determined as follows, based on the following sections of the PAS:

#23 - 1 Point for each (can have total of 12 points)

#24 - 1 Point

#25 - 1 Point for B, C or D

#26:- Level I - 0 points

Level II - 1 point for each item A through I

Level III - 2 points for each item A through M; I (walking) must be equal to or greater than Level III before points given for J (wheeling)

Level IV - 1 point for A, 1 point for E, 1 point for F, 2 points for G through M

#27 - 1 point for continuous oxygen

#28 - 1 point for Level B or C

#34 - 1 point if Alzheimer=s or other dementia

#35 - 1 point if terminal

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

IX. DECISION:

Policy reveals that there are 4 levels of care provided to recipients of Aged/Disabled Waiver Homemaker Services. The individual=s level of care is determined based on a point system as set forth in section VII (7) above.

The agency acknowledged a total of 25 points for a determination of level of care as noted on the Pre- Admission Screening Form completed August 9, 2004 (E-2). I am unconvinced by evidence offered that additional deficits or functional needs exist which would add to the point total determined by the agency. Aphasia entails an inability to communicate. In order, to qualify as "total care" there must be no physical involvement on the part of the individual in the task. For example the individual must be unable to participate to "any" degree in bathing, dressing, grooming etc. to qualify for additional point value in that category.

After reviewing the information presented during the hearing and the applicable policy and regulations, the determination of the Agency in finding the claimant eligible for a **C** Level of

Care is **upheld**.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.