



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
227 Third St.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 13, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 8, 2005. 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 your 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 520 & 570.1)

Information submitted at your hearing revealed 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 remain at a Level "D" rating. As a result, you are eligible to receive five (5) hours per day or 155 hours per month of homemaker services.

It is the decision of the State Hearing Officer to **reverse** the proposed action 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
CWVAS
BoSS
WVMi

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

_____,

Claimant,

v.

Action Number: _____

**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 July 13, 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 convened on July 8, 2005 on a timely appeal filed February 3, 2005.

It should be noted here that the Claimant's benefits have been 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
_____, Claimant's mother
_____, Claimant's aunt and caregiver
_____, RN, Case Manager, CCIL
_____, RN, Case Manager, CCIL
Kay Ikerd, RN, BoSS (participating telephonically)
Pat Everette, RN, WVMI (participating telephonically)

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 520, 570 and 580

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 520, 570 and 580
- D-2 Pre-Admission Screening (PAS) 2000 assessment completed on September 2, 2004
- D-3 Notice of Decision dated January 25, 2005

VII. FINDINGS OF FACT:

- 1) The Claimant's Aged & Disabled Waiver case, hereinafter ADW, was undergoing an annual reevaluation to verify continued medical eligibility.
- 2) Pat Everette, RN, West Virginia Medical Institute, completed a medical assessment (D-2) on September 2, 2004 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 25 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a LOC "C" (25 points)- eligible for four (4) hours per day or 124 hours per month of homemaker services. The Claimant was sent notification on January 25, 2005 (D-3) advising her of the proposed reduction in hours.

- 3) Ms. Everette reviewed the PAS 2000 that she completed for the Claimant. She testified that points were awarded in the following areas:

Question 23- Total 5 points (1 point awarded for each stated medical condition of dysphagia, aphasia, pain, mental disorder, and other- seizure disorder/chronic Otitis Media)

Question 24- Decubitis, 0 points

Question 25- Vacating, 1 point

Question 26- Functional levels, total of 17 points awarded as follows: eating, 1 point; bathing, 2 points; dressing, 2 points; grooming, 2 points; bladder incontinence, 2 points; bowel incontinence, 2 points; orientation, 2 points; transferring, 1 point; walking, 1 point; communication, 2 points

Question 27- Professional/technical needs- 0 points

Question 28- Medication administration- 1 point

Question 34- Alzheimer's, multi-farct, senile dementia or related condition- 1 point

Question 35- Prognosis, stable, 0 points

- 4) Ms. [REDACTED] testified that the Claimant sometimes requires one-person assistance with transferring and walking. She stated the Claimant has poor balance and walks on her toes. [REDACTED] testified that her daughter had been paralyzed at one point and remains unsteady on her feet. She stated that when her daughter awakens in the morning that her legs are stiff and she requires physical assistance to go to the bathroom, and that she sometimes requires help climbing stairs. In addition, the Claimant has difficulty transferring from a chair unassisted and Ms. [REDACTED] testified that she assists the Claimant in getting into the bathtub. Ms. Everette said she does not recall watching the Claimant transfer on the date of the assessment, but that the Claimant walked unassisted although she had poor balance and walked on her toes.

- 5) The Aged/Disabled Home and Community-Based Services Manual 580.2 and 580.2,b (D-1) provides that a medical eligibility reevaluation may include either a periodic or annual reevaluation. The purpose of the reevaluations is to confirm and validate an individual's continued medical eligibility for ADW services and to establish whether there is any change in the LOC the individual requires. All clients must be evaluated at least annually.

- 6) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 570.1 and 570.1.d (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- 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 are 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 for Alzheimer's or other dementia
- #35- 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:

Based on information presented during the hearing, testimony is credible concerning the Claimant's need for one-person assistance with walking and transferring. While the Claimant can ambulate unassisted at times, testimony indicated that the Claimant requires daily one-person assistance with walking and transferring upon awakening.

Walking and transferring are, therefore, raised to Level III, one-person assistance, and one (1) point is awarded in each of these areas. This brings the Claimant's total number of points to 26 and changes the Level of Care proposed by the Agency to Level of Care "D" (26 to 44 points). The Claimant is eligible to receive five (5) hours per day or 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 13th Day of July, 2005.

**Pamela L. Hinzman
State Hearing Officer**