



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 15, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 7, 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 15, 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 7, 2005 on a timely appeal filed March 23, 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's sister and caregiver
_____, Case Manager, CWVAS
Kay Ikerd, RN, BoSS (participating telephonically)
Lisa Goodall, RN, WVMI (participating telephonically)
_____, (observing telephonically from BoSS)

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 March 9, 2005
- D-3 Notice of Decision dated March 14, 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) Lisa Goodall, RN, West Virginia Medical Institute, completed a medical assessment (D-2) on March 9, 2005 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 24 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a LOC "C" (24 points)- eligible for four (4) hours per day or 124 hours per month of homemaker services. The Claimant was sent notification on March 14, 2005 (D-3) advising her of the proposed reduction in hours.
- 3) Ms. Goodall reviewed the PAS 2000 that she completed for the Claimant. She testified that points were awarded in the following areas:

Question 23- Total 9 points (1 point awarded for each stated medical condition of angina at rest, angina upon exertion, dyspnea, significant arthritis, dysphagia, pain, contractures, mental disorder, and other- hypertension)

Question 24- Decubitis, 0 points

Question 25- Vacating, 1 point

Question 26- Functional levels, total of 12 points awarded as follows: eating, 1 point; bathing, 1 point; dressing, 1 point; grooming, 1 point; bladder incontinence, 2 points; transferring, 2 points; walking, 2 points; vision, 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 is incontinent of bowel on a frequent basis, particularly at night. Since the Claimant requires assistance with transferring and walking, she cannot walk to the bathroom so she soils her bed. Ms. _____, who testified that the Claimant has bowel incontinence at least four times per week, indicated the Claimant refuses to wear pull-ups to bed. Ms. [REDACTED] testified that the Claimant does not want other people to know she has bowel incontinence problems. In addition, Ms. [REDACTED] testified that the Claimant has dementia and is intermittently disoriented. She stated there are periods of time when the Claimant is unaware of what is happening, who she is with, or what she is doing. Ms. _____ added that the Claimant sometimes sits and stares, does not seem to hear people when they talk to her, and cannot recall conversations at times. Ms. [REDACTED] stated that she and Ms. _____ did not want to contradict the Claimant during the assessment because Ms. _____ becomes combative and argumentative.

Ms. Goodall said she explained the subject of incontinence to the Claimant, and does not recall talking to Ms. [REDACTED] or Ms. _____ following the assessment regarding objections to the Claimant's assessment responses. She testified that the Claimant denied any disorientation in the two years following her stroke. Ms. Goodall stated that sitting and staring does not necessarily indicate that a person is disoriented.

- 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 that the Claimant is incontinent of bowel and has periods of intermittent disorientation. Ms. _____ testified that the Claimant is incontinent of bowel at least four times per week, and has episodes in which she is unaware of her surroundings and activities.

Bowel incontinence is raised to a Level III, incontinence, and two (2) additional points are awarded in this area. Additionally, orientation is raised to a Level II, intermittent disorientation. This brings the Claimant's total number of points to 27 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 15th Day of July, 2005.

Pamela L. Hinzman
State Hearing Officer