



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
235 Barrett Street
Grafton WV 26354
June 15, 2005

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

Dear Mr_____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 11, 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 Δ 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 your most recent medical evaluation (PAS), the agency determined your Δ Level of Care[®] had decreased. Testimony was provided concerning additional deficits or conditions.

It is the decision of the State Hearing Officer to **reverse** the determination of the Agency as set forth in the March 1, 2005 notification. Evidence reveals you continue to be eligible for a C Level of Care.

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] Central WV Aging Services

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

_____,
Claimant,

v.

Action Number: 05-BOR- 5405

**West Virginia Department of Health and Human Resources,
Respondent.**

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on June 14, 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 May 11, 2005 on a timely appeal received by the Bureau for Medical Services March 7, 2005 and by the State Hearing Examiner April 7, 2005. 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:

_____ CM, CWVAS

Libby Boggess, RN, BoSS (by phone)

Heather Randolph, 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 2/23/05

E-3 Notification, 3/1/05

C-1 Statement, Dr. _____ 6/2/04

C-2 Medical Record WVU Dept of Ophthalmology, 6/8/05

VII. FINDINGS OF FACT:

(1) The claimant is an active recipient of Aged/Disabled Home and Community-Based Waiver Services. A medical re-evaluation (E-2) was completed by WVMI on February 23, 2005. As a result of this review, WVMI determined that the claimant=s *Level of Care* to be B or 93 hours. Notification was provided March 1, 2005 (E-3). A hearing was requested by the claimant March 7, 2005. This hearing was scheduled for and convened May 11, 2005.

(2) Libby Boggess from the Bureau of Senior Services explained agency policy concerning Level of Care determinations.

(3) Heather Randolph 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 –rest and exertion, Dyspnea, Pain, Diabetes, mental disorder and other (MI) for 7 points in that block. Item #25- physically unable to vacate - 1 point. Item #26 reveals 7 points for - Bathing (1), Dressing (1), Grooming (1), Continence bowel (2), Transferring (1), and Walking (1). Item #28 Medication- prompting/supervision for 1 point. Total points 16 resulting in level of care B or 93 hours per month. Considers vision on a functional level rather than eye disease- he was able to sign his name.

(4) _____ testified that her father is disoriented as to where he might be going for example why he is here today. He is not always aware of time and people. Feels he is intermittently disoriented. Father cannot read print. Father has back pain from sciatic nerve.

(5) _____ testified that claimant has macular degeneration and his vision is not correctable. Presented exhibits C-1, 2. Claimant was previously a level C -124 hours per month. Sometimes claimant doesn't know her when she visits.

(6) Exhibits C-1 and 2, statements from Dr. _____ 6/2/04 and WVU Dept of Ophthalmology, 6/8/05 indicate a macular problem and decreasing VA. Claimant had cataract surgery (4/04) and after some initial improvement his vision has declined.

VIII. CONCLUSIONS OF LAW:

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.

Evidence submitted reveals that the Pre-Admission Screening Form completed February 23, 2005 (E-2) contains a point total of 16 based on the review criteria used to determine Level of Care (E-1). Testimony reveals that the claimant is sometimes disoriented to place and person and he has non- correctable vision limitations. These vision issues were also supported by submitted medical documentation. The consideration of a non- correctable vision deficit adds 2 additional points in determining the claimant's *level of care*.

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 B Level of Care is **reversed**. Testimony suggests at least an additional 2 points in addition to the 16 acknowledged by the agency. These 2 points are awarded for vision. Orientation may also be a possible additional point as it appears it is intermittent. The point total for purposes of determining the claimant's Level of Care is therefore increased to 18. This total results in a C Level of Care or a maximum of 124 hours of care monthly.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

ENTERED this 15th Day of June, 2005

RON ANGLIN
State Hearing Examiner