



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

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 22, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 4, 2006. 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 be 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 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
CCIL
West Virginia Advocates
BoSS
WVMI

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

_____,
Claimant,

v.

Action Number: 06-BOR-1073

**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 August 22, 2006 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 August 4, 2006 on a timely appeal filed February 6, 2006. The hearing was originally scheduled for May 5, 2006, but was rescheduled at the request of the Claimant.

It should be noted here that the Claimant's benefits have not 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:

[REDACTED], RN, Case Manager, CCIL
Todd Rundle, Regional Advocate, West Virginia Advocates
[REDACTED], Homemaker RN, [REDACTED] County Senior Center
[REDACTED], Homemaker, [REDACTED] County Senior Center
[REDACTED], relative of the Claimant (with whom the Claimant resides)
[REDACTED], RN, WVMH (participating telephonically)
Kay Ikerd, RN, BoSS (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) 2005 assessment completed on November 29, 2005
- D-3 Notice of Decision dated December 23, 2005

Claimant's Exhibits

- C-1 Pre-Admission Screening (PAS) 2005 assessment completed on November 29, 2005
- C-2 Aged/Disabled Home and Community-Based Services Manual Section 570
- C-3 Service Coordination Plan
- C-4 Diagnoses from Dr. [REDACTED]
- C-5 Notice of Decision dated December 23, 2005
- C-6 Pre-Admission Screening (PAS) 2000 assessment completed on December 2, 2004
- C-7 Aged/Disabled Home and Community-Based Services Manual Sections 520, 570 & 580
- C-8 Consent for release of information
- C-9 Notice of Decision dated December 23, 2005
- C-10 IG-BR-29

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) [REDACTED], RN, West Virginia Medical Institute, completed a medical assessment (D-2) on November 29, 2005 and determined that the Claimant continues to meet the medical eligibility criteria. Ms. [REDACTED], who represented WVMI since Ms. [REDACTED] is no longer employed by the organization, testified that the Claimant was assigned 23 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a LOC "C" (23 points)- eligible for four (4) hours per day or 124 hours per month of homemaker services.
- 3) The Claimant was sent notification on December 23, 2005 (D-3) advising him of the proposed reduction in hours.
- 4) Witnesses for the Claimant contended that additional points should be awarded in the following areas:

Total care in eating- Ms. [REDACTED], who has worked with the Claimant for the past five years, testified that the Claimant's ability to hold items has deteriorated. She testified that the Claimant can feed himself to a point with a spoon, but that she must clean up after him. Ms. [REDACTED] testified that she prepares and cuts the Claimant's food, and feeds him some foods such as soup. The Claimant holds a "sippy cup" with a straw at times, but often drops it. Ms. [REDACTED] testified that the Claimant's ability to eat declined following his stroke several years ago. He often refuses foods and/or beverages because he cannot hold them in his hand.

Both Mr. [REDACTED] and Ms. [REDACTED] contended that the Claimant would be unable to receive proper nourishment without assistance.

Ms. [REDACTED] testified that the Claimant was rated as a Level II in eating, which indicates that he requires physical assistance. She testified that meal preparation is not considered.

Based on testimony offered during the hearing, the Claimant has been properly rated as a Level II (physical assistance) in regard to his ability to eat and drink. No additional point is awarded in this area.

Total care in bathing- Ms. [REDACTED] testified that she sponge bathes the Claimant from head to toe in his bed. Ms. [REDACTED] testified that the Claimant is unable to shift his weight so she must pull or shove him to turn him over during baths. The Claimant can raise his right arm and right leg, but cannot move his left side. Ms. [REDACTED] testified that the Claimant was given a wash cloth to wash his face when he was hospitalized and he was unable to do so. Ms. [REDACTED] testified that the Claimant cannot bathe himself because of contractures of the hands. Ms. [REDACTED] contended that the Claimant receives bed baths and should be considered as requiring total care (Level III) in bathing. Mr.

█████ pointed out that Ms. █████ was not present for the hearing and the PAS offers no comments from Ms. █████ regarding the Claimant's ability to bathe.

Ms. Ikerd contended that the Claimant should be able to participate in his bath to an extent since he is able to raise his right arm and leg.

In light of testimony concerning the Claimant's left side paralysis and hand contractures, the Claimant is rated as a Level III (total care) in bathing and one (1) additional point is awarded in this area.

Total incontinence- Ms. █████ testified that the Claimant has incontinence of both the bowel and bladder at times and that most of his bladder incontinence occurs at night. He would be unable to reach the toilet if she did not transfer him.

Ms. █████ testified that the Claimant was rated as a Level II (less than total incontinence) in this area because he has accidents at times. She testified that the Claimant's functional ability to reach the toilet is not considered.

The Claimant was properly rated as a Level II in the area of incontinence as he is not incontinent at all times.

Paralysis- Mr. █████ and Ms. █████ contended that the Claimant should have received one (1) point for paralysis under the "Medical Conditions/Symptoms" portion of the PAS. The Claimant has paralysis on his left side and his movement is very limited on his right side. Ms. █████ testified that the Claimant's paralysis is evident. Exhibit C-4, information from Dr. █████, states that the Claimant has left arm paralysis.

Ms. █████ testified that WVMI did not receive the doctor's statement (C-4) until May 8, 2006 concerning the Claimant's paralysis diagnosis. That statement also included a diagnosis of dysphagia. Ms. █████ and Ms. Ikerd testified that points could have been awarded for those conditions if the documentation had been received at the time the PAS was completed. However, Ms. Ikerd stated that conceding two (2) additional points would not have altered the Claimant's Level of Care rating.

Credible testimony was offered – along with a physician's statement- to indicate that the Claimant suffers from paralysis. Therefore, one (1) additional point is awarded in this area. The PAS contains no specific comments concerning dysphagia, Ms. █████ was unavailable to provide testimony concerning this condition, and the Claimant has verified a dysphagia diagnosis via physician's statement. Therefore, one (1) additional point is awarded for dysphagia.

Mental disorder- Mr. █████ testified that several of the Claimant's previous PAS assessments indicate that the Claimant has a history of depression. He presented Exhibit C-6, a PAS completed on December 2, 2004, to verify that the Claimant received one (1) point for mental disorder at that time. The Claimant has frequently stated that he does not want to live and Mr. █████ contended that Ms. █████ is not present to verify that she sought information concerning depression. Both Ms. █████ and Ms.

_____ testified about the Claimant's depression as well.

Ms. Ikerd contended that medical conditions can change, and that there is no diagnosis of depression or information to indicate that the Claimant was prescribed medication for the condition. Mr. [REDACTED] responded that many people who suffer from depression are not treated.

One (1) additional point is awarded for mental disorder because reasonable testimony was offered to support the continued existence of this condition.

Mr. [REDACTED] contended that the Claimant should have been awarded up to 12 points for each diagnosis he has under "Other- Medical Conditions/Symptoms." However, policy indicates that an individual may only receive one (1) point under the "Other- Medical Conditions/Symptoms" (23 L) PAS section regardless of the number of additional diagnoses.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 570.1.c 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
- #26 1 point for continuous oxygen
- #27 1 point for "No" answer- medication administration
- #33- 1 point for Alzheimer's or other dementia
- #34- 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. The Claimant was awarded 23 points on a November 29, 2005 PAS and assigned a Level of Care "C" (23 points) in conjunction with his annual medical reevaluation.

2. As a result of information presented during the hearing, four (4) additional points are awarded to the Claimant, bringing the Claimant's total number of points to 27. This renders the Claimant eligible for a Level of Care "D" which is equivalent to five (5) hours per day or 155 hours per month of homemaker service hours.

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 22nd Day of August, 2006.

Pamela L. Hinzman
State Hearing Officer