



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

April 21, 2006

_____ for _____

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 13, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your mother's 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 your mother continues to require the degree of care and services necessary to qualify medically for the Aged/Disabled Waiver Program and her documented medical conditions confirm that her Level of Care should be a Level "D" rating. As a result, she is 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 mother's 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: 05-BOR-6940

**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 April 21, 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 April 13, 2006 on a timely appeal filed November 15, 2005. The hearing was originally scheduled for January 26, 2006, but it was rescheduled by the Hearing Officer.

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:

[REDACTED], Claimant's son
[REDACTED], private pay caregiver
[REDACTED], Homemaker, [REDACTED] Health Department
[REDACTED] Case Manager, CWVAS
[REDACTED] Director of Nursing, [REDACTED] Health Department
[REDACTED] RN, WVMI (participating telephonically)
Libby Boggess, 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 2, 2005
- D-3 Notice of Decision dated November 7, 2005

Claimant's Exhibits

- C-1 Letter from Dr. [REDACTED]
- C-2 RN Assessment Form dated March 16, 2005
- C-3 Drug profile sheet

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 2, 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.

- 3) The Claimant was sent notification on November 7, 2005 (D-3) advising her of the proposed reduction in hours.
- 4) Witnesses for the Claimant contended that additional points should be awarded in the following areas:

Angina upon exertion- Mr. [REDACTED] provided a letter (C-1) from Dr. [REDACTED] dated April 12, 2006 indicating that the Claimant has occasional angina requiring nitroglycerin. Ms. [REDACTED] testified that the Claimant has shortness of breath and chest pains when she is moved.

Ms. [REDACTED] testified that the Claimant denied having angina when the PAS was completed and had unused angina medication from a two-year-old prescription. Ms. Boggess objected to the letter from Dr. [REDACTED] as it was written five months after the PAS was completed.

Contracture- The Claimant had a documented cerebral vascular accident and Mr. [REDACTED] testified that contractures are often the natural result of a stroke. He testified that the Claimant wears a brace on her right leg to prevent a contracture and that her right hand is contracted. He testified that the Claimant's hand can be manipulated, but that she has no use of her arm whatsoever. Ms. [REDACTED] testified that the Claimant's hand is drawn at all times. She stated that her fingers can be straightened with manipulation, but they immediately return to the contracted position.

Ms. Boggess stated that the PAS indicates the Claimant's hand was drawn, but could be straightened with manipulation. She stated that a contracture is a frozen joint and the Department has no medical documentation of a contracture.

Exhibit C-1 states that the Claimant "has suffered a cerebral vascular accident which resulted in right sided hemipalegia/paralysis with contractures."

Arthritis- Ms. [REDACTED], who was present when the PAS was completed, testified that the Claimant had been taking arthritis medications which were pulled from the market and that she was taking over-the-counter drugs until another medication could be prescribed. She testified that she provided this information to Ms. [REDACTED] on the date the PAS was completed. Mr. [REDACTED] testified that his mother had suffered a broken hip and now has arthritis in that joint.

Ms. Boggess testified that the Department has no diagnosis of arthritis from a physician and that no medications for the condition were revealed to the nurse on the date of the assessment.

Pain- Ms. [REDACTED] testified that the Claimant has arthritis pain and has pain cream applied to her shoulder, legs and hip. Ms. [REDACTED] testified that those present denied the Claimant had pain on the date of the assessment.

Decubitis- Mr. [REDACTED] testified that the Claimant has had a broken area on her sacral area. Ms. [REDACTED] testified that she had asked those present at the assessment if there were any broken areas on the Claimant's body and they denied any. Ms. [REDACTED] testified that there was a reddened area on the Claimant's hip at that time and testified that she does not recall the question being asked.

Exhibit C-2, which is dated March 15, 2005, indicates that the Claimant had a Stage 1 decubitis on her sacral area as the result of a hospital stay.

Bladder and bowel incontinence- Ms. [REDACTED] testified that she puts the Claimant on the toilet and that the Claimant attempts to have bladder/bowel movements. Sometimes the Claimant uses the toilet, but at other times she soils her clothing and must be changed.

Ms. [REDACTED] responded that the Claimant is less than totally incontinent if she uses the potty chair at times.

Medication administration- Ms. [REDACTED] testified that she crushes up the Claimant's diabetes medication and vitamins, mixes them in apple sauce, and feeds the apple sauce to the Claimant. The Claimant cannot take the pills herself because her hands shake. When Ms. [REDACTED] is not present, the Claimant's granddaughter feeds the Claimant the medication.

Ms. [REDACTED] testified that she was told that larger pills are crushed and placed in apple sauce for the Claimant. The Claimant's daughter-in-law, who was present at the assessment, informed Ms. [REDACTED] that she lays other pills on the table and the Claimant takes them on her own.

Mr. [REDACTED] testified that it is very difficult to explain information to the Claimant and it is difficult to understand her responses. He stated that his sister-in-law, who was present during the assessment, does not provide regular care for the Claimant and that he actually spends more time with the Claimant. Ms. Boggess responded that the Claimant was given two weeks of advance notice of the assessment and that he could have made arrangements to be present.

- 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. Based on testimony provided during the hearing, the Claimant is awarded one (1) additional point for a contracture. Testimony revealed that the Claimant's hand is drawn as the result of a stroke and that this condition was present on the date of the assessment. While the letter from Dr. [REDACTED] was written in April 2006, the letter addresses the cerebral vascular accident and states that it resulted in right-sided hemiplegia/paralysis with contractures.
2. One (1) point is awarded for significant arthritis and one (1) point is awarded for pain. Testimony is credible that the Claimant has arthritis and that cream is applied to her joints to alleviate pain.
3. One (1) point is awarded for inability to administer medication. Testimony is credible that the Claimant's private pay homemaker crushes some of her medications and feeds them to the Claimant in apple sauce.
4. No additional point is awarded for angina upon exertion as conflicting testimony was provided. Those testifying for the Claimant indicated that the Claimant has angina, however, Ms. [REDACTED] testified that the Claimant denied having angina and that she had outdated angina medication from a two-year-old prescription on the date of the assessment.
5. No additional points are awarded for bladder or bowel incontinence as testimony reveals that the Claimant uses the toilet at times and is less than totally incontinent.
6. No additional point is awarded for decubitis as testimony concerning the Claimant's condition on the date of the assessment is inconclusive.

7. This brings the Claimant's total number of points to 28, which is indicative of a Level of Care "D" (26 to 44 points) and renders the Claimant eligible for 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 21st Day of April, 2006.

Pamela L. Hinzman
State Hearing Officer