



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 6, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 14, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to decrease homemaker hours under the Aged Disabled Waiver, A/DW, 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 A/DW program is based on current policy and regulations. Some of these regulations state as follows: The Aged/Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who meet all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. (Aged/Disabled (HCB) Services Manual 570- 570.1b (11/1/03).

The information which was submitted at your hearing revealed that at the time of the November 15, 2005 Pre-Admission Screening Assessment, you did meet the eligibility criteria for level of care D under the Aged/Disabled Waiver Program in which you were previously assessed.

It is the decision of the State Hearings Officer to **reverse** the proposed action of the Department to decrease homemaker hours to a level C under the A/DW program.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
[REDACTED] PHSS - Boggess, BoSS - [REDACTED], WVMI

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

Claimant,

v.

Action Number: 05-BOR-7121

**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 February 14, 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 February 14, 2006 on a timely appeal, filed December 9, 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 Witnesses:

_____, claimant's son
_____, PHSS, case manager

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services by phone
_____, WVMI by phone

Presiding at the Hearing was Sharon K. Yoho, 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 Department was correct in their decision to reduce homemaker hours under the Aged/Disabled Waiver (HCB) program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service Manual §570 and §580

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community based Services Manual §570.1 c,d. and §580.2
- D-2 Pre-Admission Screening, PAS, completed November 15, 2005
- D-3 Eligibility Determination dated November 15, 2005
- D-4 Notice of proposal to decrease homemaker hours December 2, 2005

Claimant's Exhibits:

- C-1 Statement from Martinsburg Internal Medicine Assoc.

VII. FINDINGS OF FACT:

- 1) Ms. _____ is an 80-year-old female. She is an active participant in the A/DW program and her eligibility was undergoing an annual evaluation on November 15, 2005.
- 2) A WV Medical Institute nurse completed a Pre-Admission Screening (PAS) in Ms. _____'s home with the claimant, her son, and her homemaker, present. This PAS evaluation determined that the claimant remained eligible for the Aged/Disabled Waiver program however; it was determined that the level of care that she required had decreased from level D to a level C.

- 3) This claimant has primary diagnoses of Diabetes Mellitus II, Coronary Artery Disease, and Hearing Deficit.
- 4) The November 15, 2005 PAS assigned this claimant with 25 points in determining the level of care required. The evaluating nurse assigned seven (7) points in the areas of Medical Conditions/Symptoms and eight (16) points in the area of functional levels. One (1) point was assessed for dementia related condition and one (1) point was assigned for inability to vacate.
- 5) Issues raised by the claimant's witnesses were in the areas of dysphagia, self-medicating, bladder incontinence and angina with exertion.
- 6) The claimant has some problems with swallowing however; there is no diagnosis or prescribed medication for this reported symptom.
- 7) Mr. _____ indicated that his mother needed his help with medicating however; he did not demonstrate that he had full knowledge of the medication that his mother takes.
- 8) The claimant does wear adult diapers, but is able to use the toilet at times with assistance.
- 9) The evaluating nurse assessed Ms. _____ as experiencing angina at rest. The claimant's witnesses state that she also gets short of breath with exertion such as when she is transferred to and from her wheelchair. Ms. [REDACTED] provided evidence, subsequent to the hearing, that Ms. _____ had an active prescription for nitroglycerine during the time of the PAS. She also had a diagnosis of Coronary Artery Disease at the time of the PAS.
- 10) Aged/Disabled Home and Community-Based Services Manual Section 570 (D-1)-Program Eligibility for client:

Applicants for the ADW Program must meet the following criteria to be eligible for the Program:

- C. Be approved as medically eligible for NF Level of Care.
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- 11) Aged/Disabled Home and Community-Based Services Manual Section 570.1.a – Purpose: The purpose of the medical eligibility review is to ensure the following:
 - A. New applicants and existing clients are medically eligible based on current and accurate evaluations.
 - B. Each applicant/client determined to be medically eligible for A/DW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term services needs.

- C. The medical eligibility determination process is fair, equitable and consistently applied throughout the state.

12) Aged/Disabled Home and Community-Based Services Manual Section 570.1.b – Medical Criteria:

An individual must have five deficits on the PAS to qualify medically for the A/DW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

A. Decubitus - Stage 3 or 4 (Item 24 on PAS 2005)

B. Unable to vacate a building- a person is physically unable at all times at Level 3 or higher in walking or mentally incapable of leaving the building at Level 3 or higher in orientation with a diagnosis of dementia, Alzheimer's, or related condition. (Item 25, I and 33, on the PAS 2005).

C. Functional abilities of individual in the home. (Item 25 on the PAS 2005).

- Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)
- Bathing ---- Level 2 or higher (physical assistance or more)
- Grooming--- Level 2 or higher (physical assistance or more)
- Dressing ---- Level 2 or higher (physical assistance or more)
- Continence-- Level 3 or higher (must be total incontinent- defined as when the recipient has no control of bowel or bladder functions at any time)
- Orientation-- Level 3 or higher (totally disoriented, comatose)
- Transfer----- Level 3 or higher (one person or two person assist in the home)
- Walking----- Level 3 or higher (one person assist in the home)
- Wheeling----- Level 3 or higher (must be Level 3 or 4 on walking in the home to use Level 3 or 4 for wheeling in the home. Do not count outside the home)

D. Individual has skilled needs in one or more of these areas B (g)suctioning, (h)tracheostomy, (i)ventilator, (k)parenteral fluids, (l)sterile dressings, or (m) irrigations. (Item 26 on the PAS 2005)

E. The individual is not capable of administering his/her own medications is defined as an individual not capable of administering his/her own medications if the prescription medication must be placed in the recipient's hand, mouth, tube or eye by someone other than the recipient at all times.

13) Aged/Disabled Home and Community Based Service Manual # 570.1.c,d:
There are four levels of care for clients of ADW Homemaker services. Points will be determined as follows, based on the following sections of the PAS 2005:

- #23 1 point for each (can have total of 12 points) Medical Condition
- #24 1 point Decubitus
- #25 Level 1 - 0 points Functional levels
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 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
- #26 1 point for continuous oxygen
- #27 - 1 point for "NO" answer – medication administration
- #33 - 1 point if Alzheimer's or other dementia
- #34 - 1 point if terminal

Levels of Care Service Limits:

Level A	5-9 points	62 Hours per Month
Level B	10-17 points	93 Hours per Month
Level C	18-25 points	124 Hours per Month
Level D	26-44 points	155 Hours per Month

VIII. CONCLUSIONS OF LAW:

- 1) The Aged Disabled Waiver policy provides that an individual must be assigned 26 to 44 points to qualify as requiring a Level D in care, which is 155 hours per month in homemaker services. 18 to 25 points indicates a Level C. The evaluating nurse assigned 25 points, which falls within the Level C of care.
- 2) Evidence and testimony support that the claimant should have been assessed a point for the medical condition Angina with exertion. The PAS assigned a point for Angina with rest based on the claimant's diagnosis of Coronary Artery Disease and the claimant's response to a related question. It is reasonable to believe that Angina, would also be experienced with exertion. Testimony reveals that the claimant does experience shortness of breath on exertion.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the nurse should have assigned 26 points during the PAS completion of November 15, 2005, which would place her needs within the previously assessed Level D category. With the authority granted to me by the WV State Board of Review. I am ruling to **reverse** the Agency's proposed action to decrease this claimant's homemaker services 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 6th Day of March, 2006.

**Sharon K. Yoho
State Hearing Officer**