



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

November 9, 2007



Dear Mr. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 8, 2007. 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 the 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 503.2)

Information submitted at your hearing reveals 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 "B" rating. As a result, you are eligible to receive three (3) hours per day or 93 hours per month of homemaker services.

It is the decision of the State Hearing Officer to **uphold** 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
BoSS
[REDACTED]

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

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Claimant,

v.

Action Number: 07-BOR-1507

**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 November 9, 2007 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 November 8, 2007 on a timely appeal filed June 25, 2007. The hearing was originally scheduled for August 10, 2007, but was rescheduled at the request of the Department. The hearing was then scheduled for September 6, 2007, but was rescheduled at the request of the Department. The hearing was rescheduled for September 26, 2007, but was rescheduled at the request of the Claimant.

It should be noted that the Claimant's benefits have 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
[REDACTED] daughter of Claimant
[REDACTED] daughter-in-law of Claimant
[REDACTED], RN, [REDACTED]
[REDACTED], Homemaker Aide, [REDACTED]
Kay Ikerd, RN, Bureau of Senior Services
[REDACTED], RN, West Virginia Medical Institute

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

The hearing was conducted telephonically.

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 503.2, 503.2.1 and 503.2.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 503.2, 503.2.1, 503.2.2
- D-2 Pre-Admission Screening (PAS) assessment completed on May 9, 2007
- D-3 Notice of Decision dated May 22, 2007
- D-4 Hearing request

Claimant's Exhibits:

- C-1 Diagnoses statement from Dr. [REDACTED]

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) The West Virginia Medical Institute (WVMI) Nurse completed a medical assessment (D-2) on May 9, 2007 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 15 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care “B” - eligible for three (3) hours per day or 93 hours per month of homemaker services. It should be noted that the Claimant previously qualified as a Level of Care “D”- eligible for five (5) hours per day or 155 hours per month of homemaker services.
- 3) The Claimant was sent notification on May 22, 2007 (D-3) advising him of the proposed reduction in hours.
- 4) Witnesses for the Claimant provided Exhibit C-1, a letter from Dr. [REDACTED] dated May 29, 2007, which includes diagnoses of chronic pain and osteoarthritis. The Department conceded one (1) point for each of these diagnoses, bringing the Claimant’s total number of points to 17.
- 5) The Claimant’s daughter-in-law testified that the Claimant cannot prepare meals, but can feed himself, and cannot turn on the water when he showers. His ability to shower has declined since the time the Pre-Admission Screening (PAS) was completed. The Claimant had been rated at Level II, physical assistance, in both of these areas on the PAS and that assessment is correct based on testimony. The WVMI nurse indicated that the Claimant was rated at Level II in eating because he cannot cut his own food and at Level II in bathing because his homemaker washes his back.
- 6) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2.1 and 503.2.2 (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- Medical Conditions/Symptoms- 1 point for each (can have total of 12 points) (must be based on medical evidence presented by appropriate medical professionals)
 - #24- Decubitis- 1 point
 - #25- 1 point for b., c., or d.
 - #26 Functional abilities
 - Level 1- 0 points
 - Level 2- 1 point for each item a. through i.
 - Level 3- 2 points for each item a. through m.; i. (walking) must be equal to or greater than Level 3 before points are given for j. (wheeling)
 - Level 4 - 1 point for a., 1 point for e., 1 point for f., 2 points for g. through m.
 - #27 Professional and Technical Care Needs- 1 point for continuous oxygen
 - #28 Medication Administration- 1 point for b. or c.
 - #34- Dementia- 1 point if Alzheimer’s or other dementia
 - #34- Prognosis- 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) Policy dictates that an individual's Level of Care for the Aged/Disabled Waiver Program is determined by the number of points the individual obtains on the PAS assessment tool.
- 2) The Claimant was awarded 15 points as the result of a PAS completed by WVMi in May 2007 in conjunction with his annual medical reevaluation and the Department conceded two (2) additional points during the hearing. This brought the Claimant's total number of points to 17.
- 3) Since the Claimant's PAS rating in the areas of eating and bathing is correct at Level II, no additional points can be awarded in these functional areas.
- 4) The Claimant's total number of points is, therefore, 17, which is indicative of a Level of Care "B" and renders the Claimant eligible for three (3) hours per day or 93 hours per month of homemaker service hours.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** 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 9th Day of November, 2007.

**Pamela L. Hinzman
State Hearing Officer**