



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

November 20, 2007

Dear Ms. [REDACTED]:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 7, 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. These regulations specify that each applicant/member determined to be medically eligible for ADW services receives an appropriate level of care that reflects current/actual medical condition and service needs. There are four levels of care for homemaker services. The QIO RN will record observations and findings regarding the applicant's level of function in the home. Points will be determined, based on sections 23 thru 28, 34 and 35 of the PAS. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual §503.1 and 503.2)

Information submitted at your hearing reveals that your condition at the time of your Pre Admission Screening qualifies for the degree of care and services offered under the Level D of Care under the ADW program.

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 from Level D to Level C.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, BoSS
[REDACTED], WVMI
[REDACTED]

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

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Claimant,

v.

Action Number: 07-BOR-1609

**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 7, 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 7, 2007 on a timely appeal filed June 15, 2007.

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:

Claimant's Witnesses:

[REDACTED] Claimant
[REDACTED] Claimant's daughter
[REDACTED], Homemaker, [REDACTED]
[REDACTED], Homemaker RN, [REDACTED]
[REDACTED], Case Manager, [REDACTED]

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services, BoSS, by speakerphone
[REDACTED], WVMI, by speakerphone

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 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 15, 2007
- D-3 Eligibility Determination dated May 15, 2007
- D-4 Notice of reduction in benefits dated May 29, 2007

VII. FINDINGS OF FACT:

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter ADW, was undergoing an annual reevaluation to verify continued medical eligibility in May 2007.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a Pre-Admission Screening (PAS) assessment (D-2) on May 15, 2007. The nurse noted that persons present during the assessment were the claimant, her daughter, and her homemaker. The evaluation determined that the Claimant continues to meet the medical eligibility

criteria. The WVMi nurse assigned 25 points in her evaluation of the level of care the claimant requires.

- 3) Five points were assigned for Medical Conditions and Symptoms. One point was assessed for vacating in the event of an emergency. Sixteen points were assessed in the area of functional abilities in the home. One point was assessed for each medication administration, Dementia/Alzheimer's, and Prognosis.
- 4) Witnesses for the Claimant raised issues in the areas of grooming, dressing and bowel incontinence. The evaluating nurse assessed only one point in each of these categories.
- 5) The evaluating nurse assessed grooming at a level 2 which indicates that the claimant can do part of her grooming. The nurse notes that the homemaker brushes the claimant's hair but that the claimant could brush some of her hair. The nurse noted that in all other areas of grooming, the claimant needed total care. The homemaker testified that the claimant could not raise her arm to get a brush up to her hair.
- 6) Daughter and homemaker advised the nurse at the PAS that the claimant could put her arm thru a shirtsleeve. The daughter testified that she has to take her arm and start it thru the sleeve due to her mother being blind. The claimant can then push her arm on through the sleeve.
- 7) The evaluating nurse assessed the claimant as having occasional bowel incontinence. Testimony supports that bowel incontinence is occasional.
- 8) 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 received 25 points on a PAS completed by WVMi in May 2007 in conjunction with an annual reevaluation. For the previous level of care, "D" the claimant would require at least 26 points.
- 3) Evidence and testimony presented during the hearing, did support that the Claimant is total care for grooming. The claimant is not able to get her arm up to her hair to brush it. Testimony regarding total care in dressing was not convincing. The claimant can assist in putting on a shirt. Once her hand is put into a sleeve, she can push it on through. Testimony supports that the claimant has occasional bowel incontinence as the evaluating nurse reported.
- 4) The assessment of one point for dressing and bowel incontinence was accurate. One additional point should have been awarded in the area of grooming.
- 5) The Department should have assessed 26 points in May during the assessment. 26 points is indicative of a Level of Care "D" and renders the Claimant eligible for (155) hours per month of homemaker services.

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 20th Day of November 2007.

**Sharon K. Yoho
State Hearing Officer**