

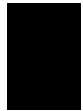


State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 970
Danville, WV 25053

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 12, 2007



Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 28, 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 (ADW) 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 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,

Cheryl McKinney
State Hearing Officer
Member, State Board of Review

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

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

██████████
Claimant,

v.

Action Number: 07-BOR-1659

**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 28, 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 August 28, 2007 on a timely appeal filed June 26, 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 – by speakerphone
[REDACTED], Case Manager, [REDACTED]
[REDACTED], Homemaker, [REDACTED]

Department's Witnesses:

Cathie Zuspan, Bureau of Senior Services, BoSS, by speakerphone
[REDACTED], RN, WVMI, by speakerphone

Presiding at the hearing was Cheryl McKinney, 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, 503.2.2, and 503.3.1

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 June 4, 2007
- D-3 Notice of Decision dated June 13, 2007

Claimant's Exhibits:

None

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 June 2007.

- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (PAS) Pre-Admission Screening form (D-2) on June 4, 2007 and determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse indicated the Claimant has Muscular Dystrophy, DM, HTN, Hyperlipidemia, Depression, and Acid Reflux. She indicated also on the form that the Claimant indicated she does have pain and takes Lortab for this.
- 3) Five (5) points were assessed for Medical Conditions and Symptoms. One (1) point was assessed for Decubitus of stage one (1). One (1) point was assessed for ability to vacate a building. Sixteen (16) points were assessed in the area of functional abilities in the home. One (1) point was assessed for medication administration. A total of twenty four (24) points were assessed during the screening.
- 4) Witnesses for the Claimant raised issues in the following areas:

Paralysis and Angina on exertion, which are under Medical Conditions/Symptoms: The Claimant was assessed a total of five (5) points in this area for Angina at rest, pain, diabetes, mental disorder, and HTN. The Claimant testified in regard to Paralysis that she cannot move her legs at all, and has been totally bedridden for more than a year. She has a wheelchair but has been unable to use it due to being bedridden. She states she can move her fingers slightly but someone must physically pick her arms up for her. She gave the example of being able to scratch her face if someone picks her arm up and places it close to her face. Claimant states she has had Muscular Dystrophy for nearly 30 years and has gradually become paralyzed from the disease. The Department contends she was not given a point for paralysis because she does not have a diagnosis from her physician and no prescribed medication related to paralysis. The Claimant contends that the Muscular Dystrophy should be considered as evidence of the paralysis as the disease is a progressive degeneration of skeletal muscle and after nearly 30 years it has progressed to the point where she cannot use her legs. In the area of Angina on exertion, the Department recorded on the PAS (D-2) the following:

When it comes to angina client states she does have chest pain and does have to take nitroglycerin for this. Client notes she does get chest pain during rest. She notes she does not get up any more for exertion.

The Claimant testified that she thought common sense would “tell you” that if you have angina at rest you would have it during exertion, and she didn’t realize that moving in the bed would be considered exertion. She testified that she does have angina when exerting herself. Claimant does have a prescription for Nitroglycerin.

- 5) 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)
- #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

- 5) Aged/Disabled Home and Community Based Waiver Policy Manual Section 503.3.1E states in pertinent part:

INITIAL MEDICAL EVALUATION

Following is an outline of the initial medical evaluation process:

E. When the home visit is made, the QIO RN, through observation and/or interview process, completes the PAS (Attachment 14). The RN will record observations and findings regarding the applicant's level of function in the home. RNs do not render medical diagnoses. In those cases where there is a medical diagnosis question, the QIO RN will attempt to clarify the information with the referring physician. In the event that the RN cannot obtain the information, he/she will document such, noting that supporting documentation from the referring physician was not received.

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 twenty four (24) points on a PAS completed by WVMI in June 2007 in conjunction with an annual evaluation. For the previous level of care, the Claimant would need at least twenty six (26) points.
- 3) Evidence and testimony presented during the hearing supports the need for an additional point to be awarded for each of the areas of paralysis and angina on exertion, for a total of two (2) additional points. Evidence is clear in that the Claimant has angina on exertion, and is prescribed medication for her chest pain. In the area of paralysis, evidence and testimony clearly show that the Claimant has a medical condition which results in a progressive degeneration of skeletal muscle, is unable to move her legs at all, and has difficulty moving other parts of her body as well. The Department relied on the Case Manager to provide documentation from the physician to support the claim of paralysis, and it is clear that no follow up was made by the Department in an attempt to document this diagnosis. Policy is clear in that the Department is required to contact the referring physician directly in an attempt to document the diagnosis, as well as document the results of the contact. This was not done. In light of this fact, I am relying on the totality of the evidence and testimony presented in the area of paralysis in making the determination to award a point in this area.
- 4) The total amount of points assessed amount to twenty six (26), and support the finding of Level "D" for this Claimant.

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 12th Day of October 2007

**Cheryl McKinney
State Hearing Officer**