



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

October 29, 2007

Dear Ms. [REDACTED]:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 24, 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 B of Care under the ADW program.

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 from Level C to Level B.

Sincerely,

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

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

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

█
Claimant,

v.

Action Number: 07-BOR-1785

**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 October 24, 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 October 24, 2007 on a timely appeal filed July 24, 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:

█ Claimant
█ Claimant's daughter

Department's Witness:

Angel Khosa, Bureau of Senior Services (BoSS), by speakerphone

[REDACTED], WV Medical Institute, 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 June 22, 2007
- D-3 Eligibility Determination dated June 22, 2007
- D-4 Notice of reduction in benefits dated July 5, 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 June 2007.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a Pre-Admission Screening (PAS) assessment (D-2) on June 22, 2007 and determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse assigned 15 points in her evaluation of the level of care the claimant requires. Present during the evaluation was the claimant, her daughter and her case manager.
- 3) Four points were assigned for Medical Conditions and Symptoms. One point was assessed for vacating in the event of an emergency. Eight points were assessed in the area of functional abilities in the home, one point for medication administration and one point for Professional & Technical Care needs.
- 4) Witnesses for the Claimant raised issues in the area of significant arthritis, which is in the category of Medical Conditions and Symptoms. They also raised issues regarding

bowel incontinence and transferring.

- 5) During the assessment, the claimant advised the evaluating nurse that she had arthritis in her right knee and left ankle. She told the nurse that she had rheumatoid arthritis. The nurse was advised that the claimant had a prescription for Hydro Codone for pain. The evaluating nurse assessed one point for pain due to the knowledge of this prescribed medication. She did not assess a point for arthritis. The claimant testified that her doctor has stated that she has arthritis, but has never written it down as a diagnosis.
- 6) The claimant advised the evaluating nurse on the day of the PAS that she has no problem with bowel incontinence. Testimony today from her case manager indicated that she has problems with constipation. Testimony from the claimant today indicated that she sometimes does not make it to the bathroom for her bowel movements if she is too far from the bathroom such as out on the porch. She says that sometimes she has as many as three bowel accidents in a week.
- 7) During the assessment, the claimant told the nurse that on bad days she needs help from others to transfer. She advised the nurse that the day of the assessment was a bad day. The nurse observed the claimant transfer using her walker requiring no help from others. The claimant testified that she can transfer using her walker, but she needs someone beside her in the event that she should fall. The evaluating nurse assessed one point for transfer because the claimant needs supervision and the use of an assistive device.
- 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 15 points on a PAS completed by WVMI in June 2007 in conjunction with an annual reevaluation. For the previous level of care, "C" the claimant would require at least 18 points.
- 3) Evidence and testimony presented during the hearing, did support that one additional point should have been awarded in the area of, significant arthritis due to the prescribed medication Hydro Codone for pain and the information given to the nurse regarding arthritis. Evidence and testimony did not support that a point should have been given for bowel incontinence as the claimant advised the nurse that she had no problem with bowel incontinence. One point was correctly assessed for transfer, as the claimant only needs supervision and the use of an assistive device for transfer. Testimony and observation by the nurse did not support that she needs hands on assistance on bad days for transfer.
- 4) The Department was correct in their determination to reduce the claimant's Level of Care from "C" to "B" which reduces the homemaker hours to (93) hours per month.

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 29th Day of October 2007.

Sharon K. Yoho
State Hearing Officer