



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 19, 2007



Dear Mr. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 26, 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 C 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 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] [REDACTED]

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

Claimant,

v.

Action Number: 07-BOR-1849

**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 September 26, 2007 for [REDACTED]. 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 September 26, 2007 on a timely appeal filed August 9, 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 wife

[REDACTED], Case Manager, [REDACTED]
[REDACTED], Homemaker RN, [REDACTED]

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services, BoSS

[REDACTED] RN, WVMI, by speakerphone

Observing: [REDACTED], WVMI

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 July 13, 2007
- D-3 Eligibility Determination dated July 13, 2007
- D-4 Notice of reduction in benefits dated July 20, 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 July 2007.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a Pre-Admission Screening (PAS) assessment (D-2) on July 13, 2007 and determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse assigned 21 points in her evaluation of the level of care the claimant requires. Present during the evaluation was the claimant, his wife and his case manager.

- 3) Three points were assigned for Medical Conditions and Symptoms. One point was assessed for vacating in the event of an emergency. Fourteen points were assessed in the area of functional abilities in the home, one point for medication administration, one point for Dementia / Alzheimer's related condition and one point for terminal prognosis.
- 4) Witnesses for the Claimant raised issues in four areas of Medical Conditions and Symptoms. These issues were regarding angina, dyspnea, dysphagia and aphasia.
- 5) During the assessment, the claimant's wife advised the nurse that her husband was to keep nitroglycerine with him but she could not afford it. She testified at the hearing that they have a prescribed nitroglycerine at the home that they keep unopened incase it is needed. He has not experienced angina for a long time. The nurse did not assess a point for angina because there was no diagnosis documented and the nurse was not advised of the prescribed medication on hand.
- 6) The claimant has diagnosed sleep apnea and he uses a CPAP machine for sleeping. The homemaker RN testified of her belief that this condition is closely related to dyspnea. The WVMH nurse testified that sleep apnea and dyspnea are two separate conditions. The wife told the nurse at the evaluation that she has noticed some shortness of breath with exertion. The evaluating nurse was not provided with evidence to support this as a medical condition and therefore; did not assess a point.
- 7) The claimant had a swallowing study completed in the year 1996 and the wife advised the evaluating nurse at assessment that her husband does have difficulty swallowing. A condition of dysphagia was not supported by a diagnosis or a prescribed medication. The results of the 1996 swallowing study was not provided to the nurse or offered as evidence.
- 8) The claimant is able to speak. He does have problems at times conveying his thoughts into the necessary words. Aphasia is the inability to speak.
- 9) 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 21 points on a PAS completed by WVMi in July 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 not support that additional points should have been awarded in the areas of dyspnea, dysphagia or aphasia. The claimant does have a prescribed medication to treat angina and the reason he does not keep it currently filled is due to inability to pay for it. One additional point should have been assessed for angina. This however would not change the decision made by the Department because five additional points would be needed for the previous level of care.
- 4) The Department was correct in their determination to reduce the claimant's Level of Care from "D" to "C" which reduces the homemaker hours to (124) 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 19th Day of October 2007.

Sharon K. Yoho
State Hearing Officer