



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

December 17, 2007

Dear Ms. [REDACTED]:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 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 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], WVMI

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

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Claimant,

v.

Action Number: 07-BOR-1958

**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 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 November 28, 2007 on a timely appeal filed August 17, 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 neighbor and friend

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services, BoSS, by speakerphone
, RN, 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 July 24, 2007
- D-3 Eligibility Determination dated July 24, 2007
- D-4 Notice of reduction in benefits dated August 3, 2007

Claimant's Exhibits:

- C-1 Letter from Dr. dated September 25, 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) A West Virginia Medical Institute (WVMI) nurse completed a Pre-Admission Screening (PAS) assessment (D-2) on July 24, 2007 and determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse assigned 14 points in her evaluation of the level of care the claimant requires.

- 3) Seven points were assigned for Medical Conditions and Symptoms. One point was assessed for vacating and six for functional abilities in the home.
- 4) The Claimant raised issue in the areas of arthritis, medication administration, bowel incontinence and contractures. Her issue regarding contractures was withdrawn as she agreed with the evaluating nurse that she does not have frozen joints but instead she has joints that stiffen at times.
- 5) The claimant advised the evaluating nurse during the assessment that she had degenerative joint disease in her back and hands. The nurse's notes on the PAS indicated a yes under the category significant arthritis. She also wrote in her notes, "DJD, back hands throughout her entire body/no DX noted." This claimant's PAS lists Morphine Sulfate and Percocet for pain. Diagnoses listed were DM Type II, Obesity and Hypertension. The evaluating nurse testified that the only diagnosis listed that might require the above pain medication would be obesity.
- 6) The claimant reported to the evaluating nurse that most of the time, she administers her own medication without assistance. She told the nurse that on her sleepy days her homemaker will usually come in and relate that she might have missed a set. The testimony given by the claimant reiterates this fact. She reports that she will have episodes where she will sleep for two days solid. During these times, the homemaker has to remind her to take her medication.
- 7) The claimant advised the nurse during the PAS that she does not have control over her bowels. She told the nurse that she has a chronic problem with diarrhea and that, "it just pours out" and that she does not realize it. She then told the nurse that meds control her bowels and that she rarely has accidents. She reported to the nurse that she had an accident two months ago. The claimant testified that she has bowel incontinence episodes in her bed 2 to 3 times per week. She related that the accident she reported to the nurse two months ago was an episode where she was not in the bed.
- 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)
 - #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 14 points on a PAS completed by WVMI in July 2007 in conjunction with an annual reevaluation. For the previous level of care, "C" the claimant would require at least 18 points or 4 additional points. The claimant only addressed 3 areas on the PAS.
- 3) Evidence and testimony presented during the hearing, did conclude that the pain medication, which the claimant is prescribed, is for her reported arthritis and not for obesity. Based on what the claimant told the nurse regarding prompting and supervision given to her by her homemaker, a point for medication should have been given. The claimant appeared to have been confused about the meaning of bowel incontinence and bowel accidents. She did not consider bowel incontinence while in her bed as an accident and therefore, the evaluating nurse did not assess a point for bowel incontinence. Testimony did support that a point for bowel incontinence should have been assessed.
- 4) Adding three points for the above conditions would increase the claimant's points to 17, which is still indicative of a B level of care which is the level of care the Department has proposed.
- 5) The Department should have assessed 17 points in July, with the addition of points for arthritis, medication administration and bowel incontinence.

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 17th Day of December 2007.

**Sharon K. Yoho
State Hearing Officer**