



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

December 27, 2007

Dear Mr. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 14, 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 for the Aged/Disabled Waiver (ADW) Program, each applicant/member determined to be medically eligible for ADW services receives an appropriate LOC that reflects current/actual medical condition and short- and long-term 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 of the PAS. (Aged/Disabled Home and Community-Based 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 C 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 C to Level B.

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**

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Claimant,

v.

Action Number: 07-BOR-1968

**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 14, 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 14, 2007 on a timely appeal filed August 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:

Claimant
Claimant's mother
, RN,
, Case Manager,
, Homemaker,

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services, by speakerphone
, 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 July 27, 2007
- D-3 Notice of Decision dated July 30, 2007
- D-4 Copy of Hearing Request Form

Claimant's Exhibits:

- C-1 Letter from Dr.
 dated November 27, 2007
- C-2 Medical Records

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 medical assessment (PAS) Pre-Admission Screening form (D-2) on July 27, 2007 and determined that the Claimant continues to meet the medical eligibility criteria.
- 3) Two (2) points were assessed for Medical Conditions and Symptoms. One (1) point was assessed for ability to vacate a building. Nine (9) points were assessed in the area of functional abilities in the home. One (1) point was assessed for medication administration, and one point (1) was assessed for behaviors. A total of fourteen (14) points were assessed during the screening.
- 4) Witnesses for the Claimant raised issues in the following areas:

Paralysis, which is under Medical Conditions/Symptoms: The Claimant was not give a point for this condition. The Claimant reports that he has paralysis in his face due to a prior surgery, and provided documentation (C-2, C-1) to support this claim. The WVMI nurse indicated the following on the PAS:

Member reports he has left sided facial paralysis and they took a nerve from his tongue to graft and this has caused paralysis of the left side of his face; the left side of his face is drooping along with the left eye and he also showed us the scar on the left side of his tongue and he reports at times he has drooling due to this paralysis. [REDACTED] did add this to her list of DX to request for additional information.

Dysphagia, which is under Medical Conditions/Symptoms: The Claimant was not given a point for this condition. The Claimant's mother testified that her son gets choked easily and she must cut his food into very small bites for him. She testified that he was given a swallow test and they were told they must be careful with him. The WVMI nurse recorded the following information on the PAS:

No DX on referral form; Mom reports he does have difficulty swallowing and he gets choked easily due to the paralysis in his throat and he used to have to go to therapy for that and he has to drink from a straw and sometimes gets choked on his food.

Pain, which is under Medical Conditions/Symptoms: The Claimant was not given a point for this condition. The Claimant testified that he has migraines and used to take very strong pain killers but now only takes over the counter extra-strength Tylenol due to the fact that his doctor does not want him addicted to the painkilling medication. He testified that he just deals with the pain, and tries other methods to control it. The WVMI nurse recorded the following information on the PAS:

Member denies that he is on any RX pain medications and he reports he has a headache behind his eyes but its gradually getting better and reports he no longer takes the RX Lortab for this; Mom reports he has headaches and stomach pain due to the reflux; [REDACTED] reports she will also f/u for additional information r/e this dx as well.

Dyspnea, which is under Medical Conditions/Symptoms: The Claimant not issued a point for this condition. The Claimant reports he has shortness of breath. The WVMi nurse recorded the following on the PAS:

Member reports he has shortness of breath at times; Mom reports his reflux was real bad and he had aspiration pneumonia and this has caused him to have difficulty at times with being SOB and especially at night time she worries about him getting choked or aspirating again; [REDACTED] reports she will f/u with [REDACTED] and reminded [REDACTED] that Dr. [REDACTED] will have to sign off on it. He doesn't take any breathing tx's, O2, or inhalers; Mom reports he had the reflux so bad that this caused the aspiration pneumonia. They understand that this item can only be marked if the Dr. gives the medical dx for it.

Vision, which is under Functional Levels: The Claimant was assessed as impaired/correctable in this area. The Claimant states that he can see very little from his left eye, and provided documentation to support this claim (C-1). The WVMi nurse recorded the following on the PAS:

Left eye has a blind spot; rt eye is ok and he is able to see to read and Mom reports he reads all the time; He showed us a book that he was currently reading, Who's who in the bible and he reported he loves to read.

The Claimant's mother testified that although her son loves to read, he can read very little. In addition to his vision problem his head shakes uncontrollably which makes focusing difficult.

Hearing, which is under Functional Levels: The Claimant was assessed as impaired/correctable in this area. The Claimant testified he has great difficulty hearing from his left ear, but can hear from his right ear better. The Department indicated that in rating this area, they do not consider whether the Claimant's condition is medically correctable; they look at whether the person can see to get around in the home. The WVMi nurse recorded the following on the PAS:

Has ringing in his left ear; he says he can only hear faintly from the left side and can hear good from rt

side and was sitting with his right ear towards me.

- 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 fourteen (14) points on a PAS completed by WVMi in July 2007 in conjunction with an annual evaluation. For the previous level of care, the Claimant would need at least eighteen (18) points.
- 3) Evidence and testimony presented during the hearing supports the need for one (1) additional point to be awarded for each of the areas of paralysis, dyspnea, pain, and dyspnea, for a total of four (4) additional points in the area of Medical Conditions and Symptoms. The Claimant clearly indicated during the PAS that he has these conditions/symptoms, and the Department failed to follow up by contacting the physician to clarify the diagnosis. Evidence also clearly shows that the Claimant should have been awarded one (1) point for vision, and one (1) point for hearing in the area of Functional Levels, for a total of two (2) additional points. Total additional points awarded during the hearing are six (6), for a total of twenty points
- 4) The total amount of points assessed amount to twenty (20), and support the finding of Level "C" 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 27th Day of December, 2007

**Cheryl McKinney
State Hearing Officer**