



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

February 8, 2006

Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 6, 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 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 you continue to require the degree of care and services necessary to qualify medically for the Aged/Disabled Waiver Program and your documented medical conditions confirm that your Level of Care should be a Level "B" rating. As a result, you are eligible to receive three (3) hours per day or 93 hours per month of homemaker services.

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.

Sincerely,

Pamela L. Hinzman
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: 06-BOR-3323

**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 February 8, 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 telephonically on February 6, 2007 on a timely appeal filed November 21, 2006.

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
██████████, Case Manager, ██████████
██████████, RN, ██████████
██████████, Homemaker, ██████████
Libby Boggess, RN, BoSS
██████████, RN, WVMI

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

All parties participated telephonically.

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 October 10, 2006
- D-3 Notice of Decision dated November 7, 2006
- D-4 Request for PAS evaluation and related information

VII. FINDINGS OF FACT:

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter ADW, was undergoing an annual reevaluation to verify continued medical eligibility.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on October 10, 2006 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 16 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care "B" (16 points)- eligible for three (3) hours per day or 93 hours per month of homemaker services. It should be noted that the Claimant previously qualified

as a Level of Care "C"- eligible for four (4) hours per day or 124 hours per month of homemaker services.

- 3) The Claimant was sent notification on November 7, 2006 (D-3) advising her of the proposed reduction in hours.
- 4) Witnesses for the Claimant contended that additional points should be awarded in the following areas:

Contracture- The [REDACTED] case manager testified that the Claimant has a left-hand deformity, which has been present since birth, and two of the Claimant's fingers are fused together. She testified that the Claimant was given one (1) point for contracture on the previous year's PAS. The Claimant testified that the two fused fingers are about ½-inches long and will not bend because they are too small.

The BoSS nurse testified that webbed fingers do not meet the description of contracture. In addition, a letter from Dr. [REDACTED] included in Exhibit D-4 does not list contracture as a diagnosis.

While it was noted that the Claimant has a hand deformity, no medical evidence was provided to support the existence of a contracture. Therefore, no additional points are awarded for contracture.

Transferring- The Claimant's homemaker testified that she sometimes assists the Claimant with transfers in the home, but the Claimant is able to get up by herself most of the time.

The WVMi nurse testified that the Claimant was able to release her recliner, get up and walk from the living room to the kitchen unassisted on the date of the assessment. The Claimant had indicated at the time that she had a walker, but did not use it.

While the Claimant may receive assistance in transferring at times, she was able to transfer independently on the date of the assessment and no additional points are awarded in this area.

Walking and Wheeling- The Claimant's case manager testified that the Claimant utilizes her walker and wheelchair within the apartment building and uses furniture/walls to steady herself as she walks. She recently acquired and utilizes a walker with wheels, and uses a wheelchair to exit her 8th-floor apartment and travel to other floors in her building via elevator.

The WVMi nurse testified that the Claimant told her she had a walker at the time of the assessment, but did not use it. During the assessment, the Claimant also stated she has two wheelchairs, but does not use them in her apartment.

Because the Claimant was able to walk unassisted on the date of the assessment and does not use a wheelchair within her apartment, no additional points are awarded for walking or wheeling.

Incontinence of bladder- The Claimant's case manager testified that the Claimant changes her clothes two to three times per day because of accidents, but wears no protective garments. The homemaker testified that the Claimant has many bowel and bladder accidents. The Claimant received a point for bowel incontinence on the PAS.

The WVMi nurse testified that the Claimant told her she never has bladder accidents and this information was not disputed by the [REDACTED] nurse who was present on the date of the assessment. The senior center nurse testified that she had no reason to dispute the information at that time.

Because the Claimant and her nurse reported she had no incontinence of bladder on the date of the assessment, the presence of urinary incontinence at that time cannot be determined and no additional points are awarded.

- 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) (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 16 points on a PAS completed by WVMi in October 2006 in conjunction with an annual reevaluation.
- 3) As a result of testimony presented during the hearing, zero (0) additional points are awarded to the Claimant.
- 4) The Claimant's total number of points remains at 16, which is indicative of a Level of Care "B" and renders the Claimant eligible for three (3) hours per day or 93 hours per month of homemaker service hours.

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 8th Day of February, 2006.

**Pamela L. Hinzman
State Hearing Officer**