



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

April 3, 2007



Dear Mr. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 8, 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 **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,

Sharon K. Yoho
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**

██████████
Claimant,

v.

Action Number: 06-BOR-3479

**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 March 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 on March 8, 2007 on a timely appeal filed December 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's Witnesses:

[REDACTED] Claimant's wife

[REDACTED] Claimant's daughter

[REDACTED], Case Manager, [REDACTED]

[REDACTED], Homemaker RN, [REDACTED]

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services, BoSS, by speakerphone

[REDACTED], 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 November 14, 2006

D-3 Eligibility Determination dated November 14, 2006

D-4 Notice of reduction in benefits dated December 14, 2006

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 November 2006.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on November 14, 2006 and determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse assigned 16 points in her evaluation of the level of care the claimant requires.

- 3) Two points were assigned for Medical Conditions and Symptoms. One point was assessed for vacating in the event of an emergency. Ten points were assessed in the area of functional abilities in the home. One point was assessed for medication administration. One point was assessed for the diagnosis of Alzheimer's and one point was assessed for the claimant's condition being terminal.

- 4) Witnesses for the Claimant raised issues in the following areas:

Bathing, which is under functional abilities: The evaluating nurse assessed one point for this area since the claimant is able to wash his private areas if the washcloth is prepared for him.

Dressing, which is under functional abilities: The claimant is able to move his extremities to assist the person who is dressing him and he is sometimes able to put his own socks on. The nurse assessed one point since he is able to offer this assistance.

Grooming, which is under functional abilities: The claimant can brush his teeth with a toothbrush prepared for him. The nurse assessed one point due to his ability to assist in this manner with grooming.

Bowel Incontinence, which is under functional abilities: His Homemaker RN and his wife state that he will only rarely make it to the bathroom for a bowel movement. The evaluating nurse did assess only one point due his not being totally incontinent of bowel.

Arthritis, which is under Medical Conditions/Symptoms: The claimant is suffering from compression fractures in his spine and has osteoporosis. It was not determined that these conditions were associated with arthritis nor was there a diagnosis of arthritis.

Aphasia, which is under Medical Conditions/Symptoms: Due to his diagnosed Parkinson's and Alzheimer's and their affects on his communication, his witnesses believe he should have received a point for Aphasia. His daughter testified that it is very hard for him to make his needs known. He makes sounds but these sounds are not always understandable. The nurse testified that he would try to answer her questions, but that she had to rely on the answers his wife gave. The nurse did not ask him any specific questions to determine if he could make his needs known.

Dysphasia, which is under Medical Conditions: The nurse did not assess a point for dysphasia. The Department's representative from BoSS did testify that some people with Parkinson's disease do have dysphasia but states that we don't know if he is spitting his food out due to his inability to swallow or if he just wants to spit it out. The claimant's wife testified that she will put food in her husband's mouth and he will sometimes hold it there for a long time and it will start drooling out of his mouth. She says that sometimes he will spit it out. She said that sometimes he will not swallow his medications. The claimant has had a swallowing assessment completed with poor results, but the doctor did not suggest a pureed diet.

- 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 November 2006 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 not support the need for additional points to be awarded to the Claimant under functional abilities. The evaluating nurse correctly assessed one point for his ability to assist in bathing, dressing and grooming and one point for his occasional incontinence of bowel.
- 4) Evidence and testimony presented during the hearing did support that the claimant should have been assessed two additional points in the area of Medical Conditions/Symptoms. It is clear that this claimant's diagnosis of Alzheimer's and Parkinson's diseases do cause the claimant to be unable to clearly make his needs known. He should have received a point for Aphasia. His diagnosed condition of Parkinson's causes him to have difficulty with swallowing. He should have been assessed a point for Dysphasia.
- 5) The Claimant's total number of points should have been 18, which is indicative of a Level of Care "C" and renders the Claimant eligible for his previously determined (124) hours per month of homemaker services.

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 3rd Day of April 2007.

**Sharon K. Yoho
State Hearing Officer**