



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 20, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 13, 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
BoSS
WVMI
Central WV Aging Services

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

_____,

Claimant,

v.

Action Number: 07-BOR-583

**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 April 13, 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 April 13, 2007 on a timely appeal filed January 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:

[REDACTED], Claimant, by speakerphone
[REDACTED] Case Manager, Central WV Aging Services (CWVAS)
[REDACTED] Homemaker RN, CWVAS
[REDACTED], Claimant's friend, by speakerphone

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 6, 2006
- D-3 Eligibility Determination dated November 6, 2006
- D-4 Notice of reduction in benefits dated January 11, 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 November 2006.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on November 6, 2006 and determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse assigned 13 points in her evaluation of the level of care the claimant requires. This falls in the Level B of care.

- 3) Five points were assigned for Medical Conditions and Symptoms. One point was assessed for vacating in the event of an emergency. Seven points were assessed in the area of functional abilities in the home.

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

Dyspnea, which is under Medical Conditions/Symptoms: The Claimant states that she uses a prescribed inhaler for breathing problems. No information regarding breathing problems or an inhaler was given to the evaluating nurse. The Claimant did not offer any evidence of the prescribed inhaler.

Wheeling, which is under functional abilities: The Claimant was assessed at a level 2 during the evaluation indicating that the Claimant wheels independently in the home. The claimant testified that she does wheel independently but does bump into things often.

Transferring, which is under functional abilities: The Claimant was assessed at a level 2 for needing supervision and the use of assisted device for transferring. The nurse included in her notes on the PAS: “Mem reports that she has fallen trying to transfer, reports that she has had to call 911 and friend to assist with getting up.” The Claimant told the nurse that if someone is there to help steady her she does not fall as much. The Claimant testified that she falls between the bed and the chair during transfer two or three times per week. She says she falls when she is getting onto the toilet and that when the Aid is there she helps with transfer.

Bladder, The Claimant reported to the evaluating nurse that she does not have accidents with bladder. She told the nurse that she uses a bedside commode and that she does not have accidents with her bladder. The Claimant stated at the hearing that she does not use diapers, but that she has some ordered. She says that she wets herself three or four times a week.

Orientation, The Claimant’s friend testified that the Claimant does not always know her when she comes. The evaluating nurse assessed the Claimant as being oriented. The nurse states that orientation is being oriented to self, place and time and that on the date of the assessment the claimant was oriented.

- 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 13 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 five additional points.
- 3) Evidence and testimony presented during the hearing, did support the need for one additional point to be awarded to the Claimant. This point should have been awarded in the area of Transfer. Testimony and notations on the PAS, regarding incidents of falls while transferring, supports the Claimant's need for physical assistance to transfer.
- 4) The lack of evidence to support a diagnosis of Dyspnea or Rx for breathing problems prevents a deficit for Dyspnea.
- 5) Testimony and evidence did not conclude that additional deficits should be assessed for the functional abilities in Wheeling, Bladder or Orientation. The claimant is able to wheel her self and she clearly appears to be oriented. The testimony of the Claimant regarding bladder incontinence was in direct conflict with the information she gave to the evaluating nurse at the time of the assessment and therefore; is not found to be credible.
- 6) The Claimant's total number of points should have been assessed at 14, which is indicative of a Level of Care "B" and renders the Claimant eligible for (93) hours per month of homemaker services.

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 20rd Day of April 2007.

**Sharon K. Yoho
State Hearing Officer**