



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

June 1, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 22, 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
PHSS

V.

**West Virginia Department of
Health and Human Resources,**

DECISION OF STATE HEARING OFFICER

This is a report of the State Hearing Officer resulting from a fair hearing concluded on May 22, 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 May 22, 2007 on a timely appeal filed March 5, 2007.

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.

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III. PARTICIPANTS:

Claimant's Witnesses:

[REDACTED], Claimant

[REDACTED], Claimant's Homemaker

[REDACTED] Case Manager, Potomac Highlands Support Services, PHSS

[REDACTED] Homemaker RN, Senior Life Services

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 February 1, 2007

D-3 Eligibility Determination dated February 1, 2007

D-4 Notice of reduction in benefits dated February 20, 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 February 2007.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on February 1, 2007 and determined that the Claimant continues to meet the medical eligibility criteria. The WVMI nurse assigned 17 points in her evaluation of the level of care the claimant requires.

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

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

Transferring, which is under functional abilities: The evaluating nurse assessed one point for this area since the claimant is able to transfer on her own with the help of assisted devices. The nurse observed the Claimant in transfer.

Aphasia, which is under Medical Conditions/Symptoms: The Claimant is able to form words. She has a mild stammer and her words sometimes have long pauses between them. WVMi defines Aphasia as being the ability to form and speak words. This Claimant clearly is able to do this.

Paralysis, which is under Medical Conditions/Symptoms: The Claimant has right sided weakness. Her Neurologist feels she has progressive sensory-motor impairment. Evidence of weakness does not support a diagnosis of paralysis.

Dysphasia, which is under Medical Conditions: The nurse did not assess a point for dysphasia. The nurse noted that the Claimant did not indicate that her food was pureed. The nurse did not have a diagnosis of Dysphasia from her physician at the time of the PAS. Exhibit C-1 states that the Claimant has increasing dysphagia for solids and liquids and that a videofluoroscopy is to be obtained for further evaluation. The Claimant does report that she chokes quite often and states that she told the nurse this.

Dyspnea, which is under Medical Conditions: The nurse noted that the Claimant denied a diagnosis of dyspnea and any medication to treat such a condition. Exhibit C-1 states that the Claimant continues to report to her physician significant dyspnea with any exertion. It further states that she continues to require 5-6 pillows or to sleep upright to prevent dyspnea when lying down. The Homemaker testified that when the Claimant gets in and out of the shower her breathing becomes very labored.

- 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 17 points on a PAS completed by WVMi in February 2007 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 her ability to transfer with the help of assisted devices.
- 4) Evidence and testimony presented during the hearing did not support that the claimant should have been assessed points in the area of Medical Conditions/Symptoms for Aphasia or Paralysis. The Claimant is able to form and speak words although with some difficulty. She is reported to have right sided weakness, but no paralysis is indicated.
- 5) Evidence in (Exhibit C-1) from the Claimant's physician clearly shows diagnosis of Dysphagia and Dyspnea. Testimony given by the Claimant's witnesses supports these two diagnoses. The Claimant states that she does choke often. Her Homemaker testified about shortness of breath upon her transfer in and out of the shower. Two additional points should have been assigned for these conditions.
- 5) The Claimant's total number of points should have been 19, which is indicative of a Level of Care "C" and renders the Claimant eligible for her 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 1st Day of June 2007.

Sharon K. Yoho
State Hearing Officer