



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

October 6, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 24, 2008. 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
Central WV Aging Services

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

_____,

Claimant,

v.

Action Number: 08-BOR-1712

**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 October 6, 2008 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 September 24, 2008 on a timely appeal filed July 10, 2008.

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 Daughter-in-law

Department's Witnesses:

Cecilia Brown, Bureau of Senior Services, BoSS, by speakerphone
Tammy Kessel, RN, WV Medical Institute, 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 May 14, 2008
- D-3 Eligibility Determination dated May 14, 2008
- D-4 Notice of reduction in benefits dated May23, 2008

VII. FINDINGS OF FACT:

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter ADW, was undergoing an annual reevaluation in May 2008 to verify continued medical eligibility and level of care required.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a Pre-Admission Screening (PAS) assessment (D-2) on May 14, 2008 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant's previous level of care was a level C. The WVMI nurse assigned 17 points in her evaluation of the level of

care the claimant requires which equates to a level of care B. Present at the assessment were the claimant, her daughter-in-law, male companion, homemaker and homemaker RN.

- 3) Four points were assigned for Medical Conditions and Symptoms. One point was assessed for vacating, ten for functional abilities in the home, one point for medication administration and one for Dementia/Alzheimers related condition.
- 4) The Claimant's daughter-in-law raised issues in the areas of bowel incontinence, wheel chair usage in the home and in dysphagia.
- 5) The nurse was told that when the Claimant's needed to ambulate in the home, her male companion assisted her with this. Testimony given does not deny this, however when the companion is not there and the homemaker has to get the Claimant to the bathroom the Claimant is transported in her wheelchair and the homemaker has to wheel the chair.
- 6) The evaluating nurse was advised at the PAS that the Claimant has control of her bowels. The nurse's notes relate that there are no bowel accidents as she uses pads and the commode. Testimony supports that the Claimant does have occasional bowel incontinence and these may occur while using pads.
- 7) The claimant has not been diagnosed with dysphagia. A swallow study was previously completed with no negative results. The Claimant's occasional problems with choking on food items cannot be categorized as dysphagia.
- 8) 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

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 assessed on the PAS assessment tool. The Claimant received 17 points on a PAS completed by WVMI in May 2008 in conjunction with an annual reevaluation. For the previous level of care, "C" the claimant would require at least 18 points.
- 2) Evidence and testimony presented during the hearing, did support that the claimant, at the time of the PAS, required a level C of care. Two additional points should have been assessed in the areas of wheeling needs and bowel incontinence.

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 6th Day of October 2008.

**Sharon K. Yoho
State Hearing Officer**