



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 468
Hamlin, WV 25523

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

December 2, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 12, 2008. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your level of care 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 document 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 Section 501)

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,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
PPL

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

_____,

Claimant,

v.

Action Number: 08-BOR-1913

**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 November 12, 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 November 12, 2008 on a timely appeal filed August 1, 2008.

It should be noted that the Claimant's benefits have been 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's son

Department's Witnesses:

Kay Ikerd, BOSS, Department's Representative, participating by telephone
Teena Testa, WVM, participating by telephone

Presiding at the hearing was Cheryl Henson, 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 Section 501

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 501.3.2.1, 501.3.2.2
- D-2 Pre-Admission Screening (PAS) assessment completed on July 21, 2008
- D-3 Notice of Decision dated July 31, 2008
- D-4 Letter to Doctor [REDACTED] dated July 28, 2008

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter called ADW, was undergoing an annual reevaluation to verify continued medical eligibility in July 2008.

- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (PAS) Pre-Admission Screening form (D-2) on July 21, 2008 and determined that the Claimant continues to meet the medical eligibility criteria.
- 3) Six (6) points were assessed for Medical Conditions and Symptoms. One (1) point was assessed for ability to vacate a building. Eight (8) points were assessed in the area of functional abilities in the home; specifically: eating, dressing, grooming, bladder incontinence, bowel occasional incontinence, transferring and walking. One (1) point was assessed for medication administration, and one (1) point was assessed for senile dementia. A total of seventeen (17) points were assessed during the screening.
- 4) Witnesses for the Claimant raised issues in the following area:

Wheeling, which is under Functional Abilities: The Claimant was rated as “wheels independently”. The WVMI nurse recorded the following on the PAS:

WHEN IT COMES TO HER WHEELING CLIENT STATES WHEN SHE IS SICK SHE HAS TO USE A WHEELCHAIR. _____ STATES SHE HAS A REGULAR WHEELCHAIR FOR WHEN SHE GOES OUT. IF THEY GO TO THE STORE THEY USE A WHEELCHAIR FOR HER TO SHOP. CLIENT NOTES SHE IS ABLE TO WHEEL HERSELF FROM ROOM TO ROOM.

The Claimant’s son testified that his mother has a power chair, and once in a great while she can use the power chair. He stated her hands shake and the controls are sensitive, and she does not have enough upper body strength to wheel herself manually. He stated that after taking a bath she must be wheeled and someone has to push her.

Bathing, which is under Functional Abilities: The Claimant was rated as “self/prompting”. The WVMI nurse recorded the following on the PAS:

WHEN IT COMES TO BATHING CLIENT STATES SHE TAKES A SHOWER. CLIENT STATES THEY HAVE A WALK IN SHOWER AND HAS A SHOWER SEAT BUILT INTO THIS. CLIENT WAS ABLE TO WASH HER FACE. CLIENT NOTES _____ [SIC] WAS WASHING HER BACK AND HER HAIR SHE IS ABLE TO DO THIS HERSELF NOW. CLIENT IS ABLE TO GET TO HER FEET AND HER LEGS IN THE SHOWER. CLIENT NOTES SHE DOES NOT NEED ANY ASSISTANCE WITH GETTING INTO THE SHOWER AND SHE DOES NOT NEED ANY HELP WITH HER BATHING.

The Claimant’s son testified that he doesn’t understand why his wife (_____) agreed with this assessment of her bathing as she must wash her and help her with her bath. The WVMI nurse stated that _____ was present during the assessment, but did step out of the

room at one time. She does not recall if this was the time she stepped out; however, she was present when the PAS was reviewed at the end of the visit.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501 (D-1) states in pertinent part:

There are 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
- #35- 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 during the PAS assessment.
- 2) The Claimant received seventeen (17) points on a PAS completed by WVMi in July 2008 in conjunction with a re-evaluation. For the previous level of care, the Claimant would need at least eighteen (18) points.
- 3) Evidence and testimony presented during the hearing support the finding of no additional points for the Claimant. The Department clearly documented the Claimant's statements during the assessment which indicate the correct assessment was made for both wheeling and bathing. The Claimant was not available for testimony during the hearing. Although the Claimant's son indicates her needs in these areas are much more significant, that in itself is not enough to support the finding of additional points.

- 4) The total amount of points assessed amount to seventeen (17), and support the finding of Level “B” for this Claimant.

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 2nd Day of December, 2008

**Cheryl Henson
State Hearing Officer**