



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

December 16, 2009

-----for -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your mother's hearing held December 15, 2009. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your mother's 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 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 501.3)

Information submitted at your hearing reveals that your mother continues to require the degree of care and services necessary to qualify medically for the Aged/Disabled Waiver Program and her documented medical conditions confirm that her Level of Care should be a Level "B" rating. As a result, she is eligible to receive three (3) hours per day or 93 hours per month of homemaker services.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to decrease your mother's Level of Care under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
[REDACTED] County Senior Center

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

-----,

Claimant,

v.

Action Number: 09-BOR-2200

**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 December 16, 2009 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 telephonically on December 15, 2009 on a timely appeal filed October 5, 2009.

It should be noted that the Claimant's benefits have continued pending a hearing decision.

II. PROGRAM PURPOSE:

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 daughter/Medical Power of Attorney
-----, Case Manager, Lewis County Senior Center
Kay Ikerd, RN, Bureau of Senior Services
Courtenay Smith, RN, West Virginia Medical Institute

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question 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 501.3.2.1 and 501.3.2.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 501.3.2.1 and 501.3.2.2
- D-2 Pre-Admission Screening (PAS) assessment completed on August 31, 2009
- D-3 Notice of Decision dated October 2, 2009
- D-4 Letter from Dr. [REDACTED] dated October 8, 2009 (received by WVMI in November 2009)

VII. FINDINGS OF FACT:

- 1) The Claimant, a recipient of Aged/Disabled Waiver (ADW) Medicaid benefits, underwent an annual reevaluation to verify continued medical eligibility for the program.
- 2) West Virginia Medical Institute (WVMI) Nurse Courtenay Smith completed a Pre-Admission Screening (PAS) medical assessment (D-2) on August 31, 2009 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 17 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care "B" - eligible for three (3) hours per day or 93 hours per month of homemaker services. It should be noted that the Claimant previously qualified for a Level of Care "C"- eligible for four (4) hours per day or 124 hours per month of homemaker services.
- 3) The Claimant was sent notification on October 2, 2009 (D-3) advising her of the proposed reduction in homemaker service hours. Ms. Smith noted that the notification was delayed due to a technical problem at WVMI.

- 4) -----, Case Manager with the [REDACTED] County Senior Center, and -----, the Claimant's daughter/Medical Power of Attorney, testified regarding the Claimant's bowel and bladder incontinence issues.

The Claimant's daughter, who was present during the August assessment, testified that her mother has a colostomy bag and cannot care for the bag independently. The Claimant's daughter indicated that her mother, who suffers from Alzheimer's disease, is becoming unaware of her bowel movements and the colostomy bag often fills before it can be changed. The Claimant's daughter indicated that the Claimant has incontinence of bladder, particularly due to frequent urinary tract infections that began in September 2009. She indicated that her mother had urinary incontinence once in a while prior to the infections and often would not inform her when the accidents occurred.

The Claimant's Case Manager testified that the Claimant cannot manage her colostomy bags due to her tremors. She also indicated that the Claimant wears protective undergarments on a daily basis due to bladder incontinence.

Kay Ikerd, RN, Bureau of Senior Services, testified that the Claimant was rated as a Level IV on the PAS - the highest level available - in regard to bowel incontinence. She indicated that the Level IV rating was based on usage of a colostomy bag and the Claimant received one (1) point in this category. Ms. Ikerd indicated that policy allows only one (1) point to be awarded for a Level IV rating in bowel incontinence.

The WVM Nurse testified that, on the date of the assessment, the Claimant reported she had experienced bladder incontinence until she started taking Detrol in September 2008 and denied episodes of incontinence while taking Detrol. WVM received a letter from Dr. [REDACTED] dated October 8, 2009 (D-4) in late November, 2009. The letter indicates that the Claimant experiences bladder incontinence several times per week, however, the nurse indicated that she could not consider the letter in her PAS findings because it was received outside of the time period to provide additional information. The Claimant's Case Manager stated that the physician had dictated the letter on October 8, 2009, but several weeks elapsed before it was sent to her.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Sections 501.3.2.1 and 501.3.2.2 (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 obtained on the PAS assessment tool.
- 2) The Claimant was awarded 17 points as the result of a PAS completed by WVMi in August 2009 in conjunction with her annual medical evaluation.
- 3) As a result of information presented during the hearing, no additional points can be awarded. The Claimant received the maximum allowable number of points (1) on the PAS for Level IV bowel incontinence, and the frequency of the Claimant's bladder incontinence in August 2009 is unclear as her condition worsened following the assessment. In addition, the Claimant indicated during the PAS that her bladder incontinence had been controlled by medication.
- 4) The Claimant's total number of points remains at 17, rendering her eligible to receive a Level B Level of Care.

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 16th Day of December, 2009.

**Pamela L. Hinzman
State Hearing Officer**