



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

July 10, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 8, 2009. 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,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
Allied Nursing
Mr. -----, Esquire / Ms. Mary McQuain, Asst. Atty. General

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

-----,

Claimant,

v.

Action Number: 09-BOR-968

**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 July 8, 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 on July 8, 2009 on a timely appeal filed March 17, 2009.

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
---- -----, Counsel for Claimant
-----, Claimant's Case Manager, Allied Nursing

Department's Witnesses:

Kay Ikerd, BOSS, Department's Representative
Mary McQuain, Asst. Attorney General, Counsel for Department
Paula Clark, WVMI

Presiding at the hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

It should be noted that the hearing was conducted by telephone with all parties dialing in to the LEADERPHONE system.

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 Waiver Services Policy Manual Section 501

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Waiver Services Policy Manual Section 501
- D-2 Request for Hearing dated March 11, 2009
- D-3 Notice of Decision dated February 20, 2009
- D-4 Eligibility Determination dated February 18, 2009
- D-5 Notice of Decision dated March 3, 2009
- D-6 Eligibility Determination dated March 5, 2008
- D-7 Pre-Admission Screening Form (PAS) completed February 18, 2009
- D-8 Fax Information dated March 2, 2009
- D-9 Informed Consent Release of Information form signed February 18, 2009
- D-10 Medical Necessity Evaluation Request form dated January 6, 2009

Claimant's Exhibits:

- C-1 Workers' Compensation Appeals Board-State of [REDACTED] document dated June 26, 1987
- C-2 Physicians Order Sheet dated July 4, 2009

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 February 2009.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (PAS) Pre-Admission Screening form (D-7) on February 18, 2009 and determined that the Claimant continues to meet the medical eligibility criteria.
- 3) In the section marked "Medical Conditions/Symptoms" eleven (11) medical conditions or symptoms are listed for evaluation, with the final area for evaluation listed as "Other". A total of twelve (12) points are possible in this section. Five (5) points were assessed here for the Claimant. One (1) point was given for each of his medical conditions and symptoms listed for consideration in this section, which include Dyspnea, Paralysis, Diabetes, Mental Disorder, and Other. The section marked "Other" includes his medical conditions and symptoms not listed on the PAS for consideration in this category. These include Post CVA, HTN, Urinary Incontinence, Spasms, Seizure Disorder, and Hyperlipidemia.
- 4) One (1) point was assessed for vacating a building in the event of an emergency. Nine (9) points were assessed under Functional Levels for the areas of eating, bathing, dressing, grooming, bladder incontinence, bowel incontinence, transferring and walking. One (1) point was assessed for administration of medications, and one (1) point was assessed for senile dementia. A total of seventeen (17) points were assessed during the screening.
- 5) The Claimant raised issue only in the area of Medical Conditions and Symptoms. The Claimant contends that he should also be awarded points for each of the six (6) conditions and symptoms listed in the section marked "Other" in this category. This would bring the total number of points awarded to him in this area to ten (10) which, when considered with the points awarded in other areas of the PAS, would raise the total points assessed for him to twenty-two (22).
- 6) The Department contends that policy dictates that eleven specific medical conditions or symptoms are considered for points in this section, with one point remaining in the category of "Other" in which all other conditions and symptoms are to be considered. The Department contends this is why only one point was assessed for medical conditions and symptoms that were not listed in this section for consideration.

7) Aged/Disabled Waiver Services Policy (D-1) Section 501.3.2.1 states in pertinent part:

There will be four levels of care for homemaker services. Points will be determined as follows, 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

9) Aged/Disabled Waiver Services Policy Section 501.3.3.1 states in pertinent part:

INITIAL MEDICAL EVALUATION

Following is an outline of the initial medical evaluation process:

E. When the home visit is made, the QIO RN, through observation and/or interview process, completes the PAS (Attachment 14). The RN will record observations and findings regarding the applicant's level of function in the home. RNs do not render medical diagnoses. In those cases where there is a medical diagnosis question, the QIO RN will attempt to clarify the information with the referring physician. In the

event that the RN cannot obtain the information, he/she will document such, noting that supporting documentation from the referring physician was not received.

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 is assessed during the Pre-Admission Screening (PAS) evaluation.
- 2) The Claimant received seventeen (17) points on a PAS completed by WVMi in February 2009 in conjunction with an annual evaluation. For the previous level of care, the Claimant would need at least eighteen (18) points.
- 3) The specific area of the PAS contested was the "Medical Conditions/Symptoms" section. Specifically, whether additional points should be awarded for the Claimant's six (6) medical conditions or symptoms listed in the "Other" category under this section.
- 4) Evidence and testimony presented during the hearing does not support the need for additional points to be awarded. Policy is clear in that only twelve points will be assessed in this section, and one (1) point will be assessed for each condition or symptom. Eleven specifically listed conditions or symptoms are to be considered for assessment of points, along with a miscellaneous category listed as "Other" to be considered for assessment of one (1) point for all other medical conditions or symptoms the Claimant may have. The Department's contention that only one (1) point is available for consideration in this "Other" category is reasonable.
- 5) 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 9th Day of July, 2009

**Cheryl Henson
State Hearing Officer**