



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

April 29, 2009

Dear -----:

Attached, is a copy of the findings of fact and conclusions of law on your hearing held March 10, 2009. Your hearing request was based on the Department of Health and Human Resources' reduction in homemaker hours under the Aged/Disabled Waiver 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.

The level of care determination 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 Waiver Manual, Chapter 501, §501.3.2.1; §501.3.2.2)

The information that was submitted at your hearing revealed that the Department was correct to award sixteen (16) points in its December 4, 2008 assessment, and was correct in its determination of your Level of Care.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to reduce homemaker hours under the Aged/Disabled Waiver Program.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, BoSS
-----, WVMI
LCOC, CMA

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

-----,

Claimant,

v.

Action Number: 08-BOR-2648

**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 April 29, 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 March 10, 2009 on a timely appeal, filed December 15, 2008.

It should be noted that benefits have been continued by the Department.

All persons offering testimony were placed under oath.

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

-----, RN, WVMi

Kay Ikerd, Department Representative, BoSS

All persons participated by speakerphone.

Presiding at the Hearing was Todd Thornton, 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 Department was correct in its proposal to reduce the Claimant's homemaker hours under the Aged/Disabled Waiver Program.

V. APPLICABLE POLICY:

Aged/Disabled Waiver Manual Chapter 501 – §501.3.2.1; §501.3.2.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Aged/Disabled Waiver Manual Chapter 501 – §501.3.2.1; §501.3.2.2

D-2 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services, dated December 4, 2008

D-3 Notice of Decision dated December 5, 2008

VII. FINDINGS OF FACT:

1) Claimant is a fifty-six (56) year old female who receives Aged/Disabled Waiver Services and for whom an assessment was completed on December 4, 2008 (Exhibit D-2).

2) The Department issued a Notice of Decision (Exhibit D-3) to the Claimant on or about December 5, 2008. The notice states, in pertinent part:

You have been determined medically eligible to continue to receive in-home services under the Aged/Disabled Waiver Program. The number of homemaker service hours approved is based on your medical needs, and cannot exceed 93 hours per month.

3) Testimony from the Department confirmed that the level in the notice (Exhibit D-3) is a reduction from the previous Level of Care "C," with 124 service hours per month.

- 4) Policy from the Aged/Disabled Waiver Manual, §501.3.2.1 and §501.3.2.2 (Exhibit D-1) states, in pertinent part:

501.3.2.1 LEVELS OF CARE CRITERIA

There are four levels of care for homemaker services. Points will be determined as follows, based on the following sections of the PAS:

Section	Description of Points
#23	Medical Conditions/Symptoms – 1 point for each (can have total of 12 points)
#24	Decubitus – 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 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

Total number of points possible is 44.

All of the above levels of care criteria information also applies to Personal Options.

503.2.1 LEVELS OF CARE SERVICE LIMITS

Level	Points Required	Hours Per Day	Hours Per Month
A	5-9	2	62
B	10-17	3	93
C	18-25	4	124
D	26-44	5	155

- 5) The WVMi nurse assigned sixteen (16) points in her evaluation of the level of care the Claimant requires. Five (5) points were assigned for Medical Conditions and Symptoms, one (1) for vacating, nine (9) for functional abilities in the home, and one (1) for medication administration.

- 6) The Claimant noted one area of dispute in point levels - under the Functional Abilities heading, or #26 on the PAS: *wheeling* (#26j). The Claimant additionally testified that she cannot stand for long periods, but the Department noted that the related Functional Abilities area – *walking* (#26i) – was assessed at a Level 4, giving the Claimant the maximum number of points.
- 7) With regard to *wheeling*, the Claimant testified that at the time of the PAS, her wheelchair was not functioning because she did not have new batteries. She indicated that she did not use the wheelchair in the kitchen, but that she did set it beside her bed and use it to wheel outside sometimes. The PAS (Exhibit D-2) included the WVMi nurse's notes on wheeling, which state:

WHEELING:

MEMBER REPORTS SHE HAS A POWER W/C BUT IS NOT ABLE TO USE IT IN THE HOME AS IT IS TOO CROWDED. MEMBER REPORTS SHE USES IT WHEN SHE GOES OUT BUT STATES IT IS NOT WORKING RIGHT NOW AND NEEDS REPAIRED.

The Department noted that functional abilities are assessed in the home, and do not reflect abilities outside the home.

VIII. CONCLUSIONS OF LAW:

- 1) The Department was correct in its assessment of the Claimant with regard to *wheeling*. The Claimant's statement at the time of the PAS indicated that she was not using her wheelchair in the home due to crowding and because the wheelchair required repairs. Testimony during the hearing revealed use outside the home, and indicated that the wheelchair only required new batteries; however, at the time of the PAS, it is clear the Claimant was not relying on her wheelchair for in home use, and should not have been awarded a point for this functional area.
- 2) 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 sixteen (16) points on a PAS completed by WVMi on December 4, 2008. For the previous Level of Care, "C," the Claimant would require at least eighteen (18) points. Evidence and testimony presented during the hearing revealed that the Department correctly awarded sixteen (16) points to the Claimant. The Department's proposal to reduce homemaker hours from a Level of Care "C" to a Level of Care "B" is correct.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department to Department to reduce homemaker hours under the Aged/Disabled Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of April, 2009.

Todd Thornton
State Hearing Officer