



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 W Washington St
Charleston, WV 25313
304-746-2360 Ext 2227**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

November 18, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 28, 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 Hearings 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 (HCB) Title XIX Waiver Services 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 your 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 WVM. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual 503.2, 503.2.1 and 503.2.2)

The information which was submitted at your hearing revealed that your Level of Care should be reduced from a Level AC@ to a Level "B" Level of Care. As a result, you are eligible to receive three (3) hours per day / 93 hours per month of homemaker services.

It is the decision of the State Hearings Officer to uphold the proposal of the Department to reduce your homemaker service hours under the Medicaid Title XIX (HCB) Waiver Program.

Sincerely,

Jennifer Butcher
State Hearings Officer
Member, State Board of Review

Cc: Erika H. Young, Chairman, Board of Review
WVM
BoSS
Res Care Home Care

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

_____,
Claimant,

v.

Action Number:08-BOR 1129

**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 18, 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 June 19, 2008 on a timely appeal, filed March 21, 2008.

It should be noted here 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
_____, Case Manager, Res Care Home Care
_____, Homemaker RN, Special Touch Nursing
_____, Homemaker for Special Touch Nursing
Kay Ikerd, Bureau of Senior Services, RN
Paula Clark, West Virginia Medical Institute RN

Presiding at the Hearing was Jennifer Butcher, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether or not the Department 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 Section 503
- D-2 Pre-Admission Screening (PAS) completed on January 17, 2008
- D-3 Notice of Potential Denial dated March 28, 2008

VII. FINDINGS OF FACT:

- 1) On January 17, 2008 the Claimant was medically assessed (Exhibit D-2) to determine continued medical eligibility for participation in the Aged/Disabled Waiver Services Program (ADW) and assign an appropriate Level of Care, hereinafter LOC for homemaker services. In attendance for the reassessment was the Claimant, _____, Claimant's Daughter; _____, Homemaker RN with Res Care; and the WVMi Nurse. It should be noted that the Claimant was receiving homemaker services at a Level "C" LOC at the time of the reevaluation.
- 2) The Claimant was assigned 17 points by the evaluating WVMi Nurse for documented medical conditions that require nursing services. A LOC "B" (10-17 points) was assigned to claimant making her eligible for three (3) hours per day or 93 hours per month of homemaker services. It should be noted that the Claimant previously

qualified as a LOC “C” (18-25 points) - eligible for four (4) hours per day or 124 hours per month of homemaker services.

- 3) On March 28, 2008, the Claimant was notified via a Notice of Decision (Exhibit D-3) that she continues to be medically eligible for participation in the ADW Program, however, the amount of homemaker service hours were reduced to 93 (Level “B” LOC).
- 4) The Claimant representatives did not contest the Claimant’s level “B” Level of Care. The Claimant did not understand due to the reduction in the amount of hours that someone would be with her how she was going to be able to get to her medical appointments.
- 5) The Homemaker RN and the Case Manager testified they tried explaining when the assessment was completed the Claimant’s health had improved and the amount of hours needed to care for her had reduced. The care providers also added they were going to set up an appointment with the Claimant in the next week to evaluate the other options for care and transportation to appointments.
- 6) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2.1 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) (must be based on medical evidence presented by appropriate medical professionals)

#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 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 provides that an individual's Level of Care (LOC) for the Aged/Disabled Waiver Program is determined by the number of points awarded on the PAS assessment tool.
- 2) The Claimant received 17 points on a PAS completed by WVMi in January, 2008 during her annual reevaluation.
- 3) In accordance with existing policy, an individual with 17 points qualifies as a level "B" LOC and therefore eligible to receive 3 hours per day or 93 hours per month of homemaker services.

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 18th Day of November 2008.

Jennifer Butcher
State Hearing Officer