



**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**

October 17, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 19, 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 WVMI. (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 "C" 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
WVMI
BoSS
CWWAS

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

Claimant,

v. Action Number: 08 BOR-1150

**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 October 17, 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 25, 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's Witnesses

_____, Claimant

_____, Claimant's daughter

_____, Claimant's homemaker

_____, RN with Mountain Cap

_____, Case Manager from Central WV Aging Services

Department's Witnesses

Kay Ikerd, RN - Bureau of Senior Services (BMS)

Selena Hall, RN - WVMI

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 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 Sections 503.2, 503.2.1 and 503.2.2
- D-2 Pre-Admission Screening (PAS) assessment completed on June 23, 2008
- D-3 Notice of Decision dated June 17, 2008
- D-4 Notice of Decision dated March 25, 2008

Claimants' Exhibits:

- C-1 Additional medical information for review from _____, P.A.C. dated June 9, 2008
- C-2 Written statement form Homemaker [REDACTED] dated June 6, 2008

VII. FINDINGS OF FACT:

- 1) On March 14, 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, her homemaker and the WVMi Nurse.
- 2) The Claimant was assigned 15 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 17, 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 was reduced to 93 (Level "B" LOC).
- 4) The Claimant and her representatives contend that the Claimant should remain a level "C" as she should have been awarded four additional points in the areas of incontinence of bladder, wheeling, vision, and administering medication. If the Claimant would have been awarded these points, she would have accumulated 19 points and would remain a level "C" LOC.
- 5) Claimant testified her bladder constantly leaks more than she had stated at the time of the assessment in March. The WVMi Nurse stated in her report that "member leaks, wears Depends and panty liners." With the daily usage of Depends and panty liners as indicated by WVMi Nurse and the statement from Claimant, an additional point will be given for Incontinence of Bladder
- 6) Claimant testified she does use a wheelchair. The WVMi Nurse noted in her report no wheelchair is used

in the home, just a walker. Claimant agreed with the wheelchair assessment from WVMi Nurse. No additional points can be given in this area.

- 7) The Claimant stated her vision is not correctable. She can not see in one eye. According to the explanation given by Kay Ikerd, BMS, RN, the WVMi Nurse is looking at the deficit of vision during the assessment as, can the individual see to function in their home. The nurse documented "member was able to read print on personal options, states eye site poor, states has lazy eye on left eye, wears glasses." There was no medical documentation presented during the time of the assessment from a physician stating the Claimant is blind in one eye. The evidence the Claimant provided was a list of deficits that was written on a prescription pad signed by [REDACTED] Physician Assistant Certified (P.A.C), not a physician. No diagnosis of blindness was indicated; therefore no additional points could be awarded.
- 8) Claimant indicated during her testimony she needed assistance with her medication, she did not inform the WVMi Nurse of this the day of assessment. Her homemaker opens the bottles for her and sometimes she would mix up the different pills, but she could correct the medications before she consumed the pills. WVMi Nurse reported "member can take all her meds herself without assistance. Member sets up her own med box." Claimant suffers from arthritis and requires assistance with opening her medication bottles. A point should to be awarded for needing physical assistance.
- 9) Aged/Disabled Home and Community-Based Services Waiver Policy Manual § 503.2.1 and 503.2.2: 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) (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 15 points on a PAS completed by WVMi in February 2008 during her annual reevaluation.
- 3) As a result of the evidence presented at the hearing, two (2) additional points were awarded to the Claimant's LOC determination.

- 4) 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 Day of October, 2008.

Jennifer Butcher
State Hearing Officer