



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

December 5, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 4, 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 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, Chapter 500, §§501.3.2.1 & 501.3.2.2)

Information submitted at the hearing reveals that your Level of Care should remain at a Level "C." As a result, you continue to be eligible to receive four (4) hours per day / 124 hours per month of homemaker services.

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

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

Pc: Erika H. Young, Chairman, Board of Review
BoSS
CCWV
WVMI

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

_____,

Claimant,

v.

Action Number: 08-BOR-1474

**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 5, 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 originally scheduled to convene on September 25, 2008 but was rescheduled at the request of the Claimant and convened on December 4, 2008 on a timely appeal filed June 2, 2008.

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
_____, Homemaker, Catholic Charities of WV (CCWV)
Kay Ikerd, RN, BoSS (Participated telephonically)
Debra LeMasters, RN, WVMI (Participated telephonically)

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) 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:

Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, Section 501.3.2.1 & 501.3.2.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services - Section 501.3.2.1 & 501.3.2.2
- D-2 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated May 23, 2008
- D-3 Notice of Decision dated May 27, 2008

Claimant's Exhibits:

- C-1 Handwritten correspondence from the Claimant stating her case received on December 1, 2008. (The prescription pad note that accompanied the Claimant's correspondence dated 11/25/08 was not given any weight as it was received six (6) months subsequent to the medical evaluation and not available to the evaluation nurse from WVMI)

VII. FINDINGS OF FACT:

- 1) On May 23, 2008, the Claimant was medically assessed (D-2) to determine continued medical eligibility and assign an appropriate Level of Care, hereinafter LOC, for participation in the Aged/Disabled Waiver Services Program (ADW). It should be noted that the Claimant was receiving Homemaker Services at a level "C" LOC at the time of the reevaluation.

- 2) On or about May 27, 2008, the Claimant was notified via a Notice of Decision (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) per month.
- 3) Medicaid policy was stipulated by both parties and the Department called its witness to review the medical findings on the Pre-Admission Screening (PAS) Form completed on May 23, 2008 (D-2). The WVMi RN reviewed the PAS form and testified that the Claimant was awarded 17 points for documented medical conditions that require nursing services. She testified that this finding is consistent with a LOC "B" (10-17 points) making the Claimant eligible for 3 hours per day or 93 hours per month of homemaker services.
- 4) The Claimant and her representative contend that the Claimant should remain a LOC "C" as she should have been awarded additional points for pain (Section #23.h.) and bowel incontinence (Section 26.f.).
- 5) Evidence received at the hearing reveals that WVMi was neither provided medical documentation nor advised of bowel incontinence at the time of the medical assessment. While the Claimant reported that this development is recent, the appeal is based on circumstances as they were in May 2008. No additional LOC points can be awarded for bowel incontinence.
- 6) The Claimant reported that she was experiencing pain at the time of the assessment and that she now takes prescription medication for the pain. The Claimant underwent surgery for colon cancer in January 2008, and because her wound became infected with MRSA, she was in a hospital and later a nursing facility until April 2008. The PAS notes that the Claimant was receiving sterile dressings for an open wound in the abdomen area at the time of the assessment and section 23 confirms a diagnosis of "significant arthritis." While the Department contends that a physician's diagnosis of pain and/or a prescription medication must be prescribed for pain in order to award a point in this area, there is no written policy found to support the Department's position. The Claimant was managing her pain by taking 650mg of Tylenol every 6 hours (see D-3, page 5 of 9, Section #29) at the time of the assessment and it is more than reasonable, given the Claimant's medical condition, that she was experiencing pain at the time of the assessment. Based on the evidence, one (+1) additional point is awarded to the Claimant's LOC.
- 7) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2.1 and 501.3.2.2: 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)
 - #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 May 2008.
- 3) As a result of the evidence presented at the hearing, one (1) additional point is awarded to the Claimant's LOC determination for a total of 18 points.
- 4) In accordance with existing policy, an individual with 18 points qualifies as a level "C" LOC and is therefore eligible to receive 4 hours per day or 124 hours per month of homemaker services.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Department's proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled, Title XIX (HCB), Waiver Services Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 5th Day of December, 2008.

**Thomas E. Arnett
State Hearing Officer**