



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 1, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 18, 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 AC. 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 Program.

Sincerely,

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

Pc: Erika H. Young, Chairman, Board of Review
BoSS
Catholic Charities of WV

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

_____,

Claimant,

v.

Action Number: 08-BOR-1847

**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 1, 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 November 18, 2008 on a timely appeal filed July 30, 2008.

It should be noted that the Claimant's benefits have continued at the pre-hearing level 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
_____, Claimant's daughter
_____, CM, Catholic Charities of WV (CCWV)
Kay Ikerd, RN, BoSS
Debra LeMasters, RN, WVMI

All parties 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:

Medicaid Policy Manual, 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 Medicaid Policy Manual, 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 7/17/08
- D-3 Notice of Decision dated July 28, 2008
- D-4 Correspondence from Debra LeMasters, RN to Dr. [REDACTED] dated 7/21/08
- D-5 Additional information (prescription form) signed by Dr. [REDACTED] on 7/22/08
- *D-6 Correspondence dated July 31, 2007 and a note on prescription form dated 11/25/08 indicating the Claimant has urinary incontinence.

* Received within the 10-day period subsequent to the hearing as directed on the record.

VII. FINDINGS OF FACT:

- 1) On July 17, 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 AC@ LOC at the time of the reevaluation.

- 2) On or about July 28, 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).
- 3) The WVMi RN reviewed the Pre-Admission Screening (PAS) form (D-2) and purported 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," making the Claimant eligible for 3 hours per day or 93 hours per month of homemaker services.
- 4) The Claimant contends that she should remain a level "C" LOC as she should have been awarded a total of four (4) additional points in the following areas: *Bladder incontinence* should be level 3 (2 points), *transferring* should be level 3 (1 point) and *wheeling* should be level 3 (1 point).

Testimony received on behalf of the Claimant asserts that she has maintained a diagnosis of bladder incontinence for several years. According to testimony received at the hearing, the Claimant continues to wear protective pads that must be changed 3 to 4 times per week due to episodes of bladder incontinence. As a matter of record, this information was not included in the documentation reviewed by the WVMi RN. Because the testimony received at the hearing was deemed credible, the Claimant was provided an opportunity to submit verification of an incontinence diagnosis from her physician by December 1, 2008.

On November 25, 2008, verification was received from the Claimant's physician (D-6) that verifies the Claimant continues to present a diagnosis of urinary incontinence. Based on the evidence, two additional points (+2) are awarded.

The Claimant was reported to frequently require physical assistance with transfers. The WVMi RN testified that the Claimant did have difficulty transferring and noted in D-2, page 9 of 10, that – "At visit she grasped armrest of wh/ch and rocked back and 'several times' before she could transfer off of the couch. Was also sitting on 2 pillows. Pivot type transfer but noted she gets feet 'tangled up' due to cannot lift or move left leg and foot when standing even with brace on." The Claimant's daughter testified that she lives next door and her mother often calls when she needs assistance getting out of her wheelchair. Based on the evidence, there are occasions when the Claimant requires a one person assist in transferring and one (+1) additional point is therefore awarded.

The Claimant occasionally gets stuck while wheeling her wheelchair in her home. She keeps her cordless phone in her possession at all times and must sometimes call her daughter to help her get out of the hallway. Because of this recurring situation, the Claimant contends that she requires situational assistance with wheeling. Medical documentation indicates the Claimant has left side paralysis. She relies on a manual wheelchair in her home for mobility and uses her right hand to move the right wheel and her right foot to push on the floor. Based on the evidence, it is reasonable to expect that the Claimant would require situational assistance with wheeling (level 3) - one (+1) additional point is therefore awarded.

- 5) 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) (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 LOC points on a PAS completed by WVMi in July 2008 during her annual reevaluation.
- 3) As a result of the evidence presented at the hearing, four (4) additional points are awarded to the Claimant's LOC determination for a total of 21 points.
- 4) In accordance with existing policy, an individual with 21 points qualifies as a level "C" LOC and 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 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 1st Day of December, 2008.

**Thomas E. Arnett
State Hearing Officer**