



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

October 21, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 21, 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 503.2)

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

cc: Erika H. Young, Chairman, Board of Review
BoSS
CCIL

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

_____,

Claimant,

v.

Action Number: 08-BOR-1849

**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 21, 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 October 21, 2008 on a timely appeal filed August 1, 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
_____, Claimant's ex-wife
[REDACTED] CM, CCIL
Kay Ikerd, RN, BoSS
Debra LeMasters, RN, WVMI

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 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) assessment completed on July 24, 2008
- D-3 Notice of Decision dated July 31, 2008

Claimant's Exhibits:

- C-1 Correspondence from [REDACTED] DO, Assistant Professor, [REDACTED] Dept. of Family Medicine

VII. FINDINGS OF FACT:

- 1) On July 24, 2008, the Claimant was medically assessed (Exhibit 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 July 31, 2008, the Claimant was notified via a Notice of Decision (D-3) that he 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 (Exhibit D-2) and testified that the Claimant was awarded 16 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 he should have been awarded additional points in the following areas: *Dressing* (should be level 3, total care), *Bathing* (should be level 3, total care), *Grooming* (should be level 3, total care) and *incontinence of bladder* (should be incontinent).
- 5) The following findings are specific to the areas contested by the Claimant:

Individuals who require total care with dressing are unable to assist with weight bearing movements – arms must be lift and hand pulled through sleeves etc... The PAS assessment reveals that the Claimant was assessed at a level 2 (physical assistance) in dressing and was awarded one (1) point toward his level of care (LOC) determination. The Claimant reported at the time of the assessment that he is unable to put on his shoes, socks or pants due to paralysis, however, he reported that he was able to put on his shirt independently. Credible testimony received at the hearing reveals that the Claimant requires some assistance to put on his shirt but that he does participate by directing his arms into the sleeves and assisting with putting his shirt on. Because the Claimant is able to participate and assist with dressing, the Claimant has been correctly assessed as a level 2 (physical assistance). **No additional LOC points can be awarded in the area of dressing.**

Testimony and documentation submitted at the hearing reveals that the Claimant was correctly assessed at a level 2 (physical assistance) in bathing. The Claimant testimony is consistent with the information reported during the assessment - he can wash his upper body. An individual requiring total care in bathing would be unable to assist at any level. **Based on the evidence, the PAS accurately reflects the Claimant’s bating abilities and no additional LOC points can be awarded.**

The Claimant was assessed as a level 2 (physical assistance) in grooming and awarded one (1) LOC point on the PAS. The WVMi RN testified that the Claimant was unable to participate in all areas of grooming except brushing his teeth. The Claimant has contracted fingers and impaired coordination of his arms (noted in D-2). The Claimant and his witnesses testified that due to difficulty with grasp, he is unable to brush his teeth. In consideration of the Claimant’s limitations and documented medical condition, this finding is clearly reasonable. **Based on the evidence, the Claimant is awarded one (1) additional LOC point as he is total care (level 3) in grooming.**

The Claimant contends that he should have been assessed at a level 3 (incontinent of bladder) in section 23.e. The PAS assessment indicates that the Claimant must “self cath every 4-6 hours. “Claimant denied any urination in between times.” Testimony received at the hearing reveals that the Claimant has frequent urinary leaks between catheterization and that he often “soaks his bed while sleeping.” In addition, the Claimant submitted Exhibit C-1 that includes a diagnosis of “spastic and overactive bladder resulting in incontinence” from Dr. [REDACTED] **Based on the evidence, the Claimant is incontinent of bladder and is therefore awarded two (2) points toward his LOC determination.**

- 6) 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 16 points on a PAS completed by WVMi in July 2008 during his annual reevaluation.
- 3) As a result of the evidence presented at the hearing, three (3) additional points are awarded to the Claimant's LOC determination for a total of 19 points.
- 4) In accordance with existing policy, an individual with 19 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 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 21st Day of October, 2008.

**Thomas E. Arnett
State Hearing Officer**