



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

November 5, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 29, 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 that your Level of Care should remain at a Level "D." As a result, you continue to be eligible to receive five (5) hours per day / 155 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

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

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

_____,

Claimant,

v.

Action Number: 08-BOR-1960

**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 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 convened on October 29, 2008 on a timely appeal filed August 18, 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
_____, CM, CWVAS
_____, Homemaker, Visiting Homemaker Services
_____, Homemaker RN, Visiting Homemaker Services
_____, LSW, Visiting Homemaker Services
Cecelia Brown, QA Program Manager, 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 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 Medicaid Aged & Disabled Waiver Program – Medical Necessity Evaluation Request dated 5/22/08
- D-3 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services
- D-4 Notice of Decision dated August 8, 2008
- D-5 Correspondence (Fax date 7/31/08) from Dr. [REDACTED]

VII. FINDINGS OF FACT:

- 1) On July 30, 2008, the Claimant was medically assessed (D-3) 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 “D” LOC at the time of the reevaluation.

- 2) On or about August 6, 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 124 (Level "C" LOC).
- 3) The Department reviewed Medicaid policy and called its witness to review the medical findings on the Pre-Admission Screening (PAS) Form. The WVMI RN reviewed the PAS form (D-3) and testified that the Claimant was awarded 25 points for documented medical conditions that require nursing services. She testified that this finding is consistent with a LOC "C" (18-25 points) making the Claimant eligible for 4 hours per day or 124 hours per month of homemaker services.
- 4) The Claimant's representative contends that the Claimant should remain a LOC "D" as she should have been awarded additional points for chronic skin ulcers, and contend that she is total care in bathing and dressing. Pursuant to Medicaid policy, one (1) additional point must be identified in order for the Claimant to qualify at a Level "D" LOC.
- 5) The Claimant develops wounds, described as skin ulcers, when she bumps her legs as a result of her diabetic condition. The Claimant routinely visits a wound care center for treatment and the Claimant's representatives contend that this condition is similar, if not the same, as a decubitus. The evidence reveals that a decubitus is a skin ulcer that develops as a result of continued weight or pressure on a bony area of the skin. The Claimant's diabetic ulcers are the result of a different source and there is no mention of decubitus included in the information provided by the Claimant's physician (See D-2). Based on the evidence, the Claimant cannot receive an addition point for decubitus.
- 6) The Claimant was assessed in exhibit D-3 as requiring physical assistance (Level-2) in dressing and was awarded one (1) point toward her LOC. The Claimant contends that she is total care for dressing as she has hemiparesis (paralysis in one side of the body) due to a CVA (stroke). The Department noted that total care can only be identified when an individual requires assistance with weight-bearing movements (lifting arms/legs etc...) rendering the Claimant unable to assist at any level. The Department's witness testified that the Claimant can and does assist in dressing by helping to position her body (arms, legs, leaning forward) to assist with the dressing process - thereby completing weight-bearing tasks and effectively participating in the dressing process. The evidence reveals that the Claimant was properly assessed and appropriately awarded one (1) point toward her LOC – no additional points can be awarded in the area of dressing.
- 7) The Claimant's functional ability to participate in bathing was questioned due to her aforementioned medical condition. The Claimant was assessed as requiring physical assistance and awarded one (1) LOC point, however, testimony received at the hearing reveals that even though the Claimant attempts to participate/assist in bathing, she is unable to effectively wash or clean any part of her body and that the homemaker must wash all areas to ensure the Claimant is clean. In consideration of the Claimant's medical condition, as well as the importance of cleanliness/hygiene given the Claimant's skin condition, the Claimant requires total care in bathing and an additional point (+1) toward her LOC is therefore awarded.

8) 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 25 points on a PAS completed by WVMi in July 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 26 points.
- 4) In accordance with existing policy, an individual with 26 points qualifies as a level "D" LOC and is therefore eligible to receive 5 hours per day or 155 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 5th Day of November, 2008.

**Thomas E. Arnett
State Hearing Officer**