



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 19, 2008

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 16, 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 while you remain medically eligible to receive benefits and services through the Aged & Disable Waiver Services Program, your Level of Care should be reduced from a level "C" to a Level "B." As a result, you are eligible to receive five (3) hours per day / 93 hours per month of homemaker services.

It is the decision of the State Hearing Officer to **uphold** 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  
WVMI

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 08-BOR-2123**

**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 19, 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 December 16, 2008 on a timely appeal filed September 10, 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's daughter/representative  
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.

All parties participated telephonically.

**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 8/27/08
- D-3 Notice of Decision - dated 9/2/08
- D-4 Medicaid Aged & Disabled Waiver Program – Medical Necessity Evaluation Request dated 7/30/08

**Claimant's Exhibits:**

- C-1 Correspondence from [REDACTED] M.D., dated 11/19/08

**VII. FINDINGS OF FACT:**

- 1) On August 27, 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 September 2, 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 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 findings on the PAS form (D-2) and testified that the Claimant was awarded 13 points for documented medical conditions that require nursing services. 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’s representative contends that the Claimant should remain a LOC “C” as the Claimant condition has deteriorated. Claimant’s Exhibit C-1, correspondence from the Claimant’s physician dated November 19, 2008 (Received November 24, 2008), was submitted as evidence to support the need for additional homemaker service hours. While this document clearly supports testimony regarding the deteriorating medical condition of the Claimant, this information was not available to the evaluating nurse when the assessment was completed in August 2008.
- 5) The Department’s witness testified that she contacted the Claimant’s physician to identify medical conditions but her call was not returned. In addition, the Department submitted Exhibit D-4, Medical Necessity Evaluation Request signed by the Claimant’s physician on 7/30/08, to show the diagnoses provided by the Claimant’s physician - Rheumatoid Arthritis and Chronic Anxiety – and to show that nothing was included under the section “Other Pertinent Medical Conditions.” As a result, the Department purported that no additional points could be awarded.
- 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)
  - #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 13 points on a PAS completed by WVMI in August 2008. Although the evidence submitted on behalf of the Claimant appears to indicate that the Claimant would benefit from additional homemaker service hours, this evidence was received three (3) months after the assessment was completed and not made available to the evaluating nurse. Based on the medical information available to the Department in August 2008, I find the LOC determination to be correct.
- 3) In accordance with existing policy, an individual with 13 points qualifies as a level "B" LOC and is 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 19<sup>th</sup> Day of November, 2008.**

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**Thomas E. Arnett  
State Hearing Officer**