



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

February 25, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 19, 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)

The information submitted at the hearing reveals that while you continue to be medically eligible to participate in the Aged and Disabled Waiver Program, your Level of Care should be reduced from a level "D" Level of Care to a level "C" Level of Care. As a result, you are eligible to receive 4 hours per day / 124 hours per month of homemaker services.

It is the decision of the State Hearing Officer to **uphold** the Department's proposal 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
CWVAS
WVMI

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

_____,
Claimant,

v.

Action Number: 07-BOR-2186

**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 February 25, 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 January 9, 2008 but was rescheduled due to the Claimant's illness and convened on February 19, 2008 on a timely appeal filed September 28, 2007.

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:

_____, CM, CWVAS
_____, Claimant's representative/POA
_____, Homemaker, Mountain Cap

Jenni Sutherland, LSW, BoSS
Karen Keaton, RN, WVM

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:

Aged/Disabled Home and Community-Based Services Manual Sections 503.2, 503.2.1 and 503.2.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 503.2, 503.2.1, 503.2.2
- D-2 Pre-Admission Screening (PAS) assessment completed on September 7, 2007
- D-3 Notice of Decision dated September 17, 2007

VII. FINDINGS OF FACT:

- 1) On September 7, 2007, 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 Program). It should be noted that the Claimant was receiving Homemaker Services at a level AD@ LOC at the time of the reevaluation.
- 2) On or about September 17, 2007, the Claimant was notified via a Notice of Decision (Exhibit D-3) that he continues to be medically eligible for participation in the ADW Program, however, homemaker service hours were reduced to 124 (Level "C" LOC).

- 3) The WVMI RN reviewed the Pre-Admission Screening (PAS) form (Exhibit D-2) at the hearing and testified that the Claimant was awarded 23 points for documented medical conditions that require nursing services. She testified that this finding is consistent with a LOC "C," making the Claimant eligible for 4 hours per day or 124 hours per month of homemaker services.
- 4) The Claimant's representatives purported that the Claimant should have been awarded three (3) additional LOC points as they contend the Claimant is a level 3 (total care) in the areas of bathing, dressing and grooming.
- 5) The Claimant's homemaker testified that she must bathe the Claimant but acknowledged that he does wash his face and hands. This homemaker's testimony is consistent with the documentation found in Exhibit D-2. Because the Claimant is participating in bathing, the Department has correctly assessed the Claimant at a level-2 - physical assistance only. Therefore, no additional level of care points are awarded in bathing.
- 6) The evidence reveals that the Claimant has been wearing hospital gowns for the last year. It was reported at the time of the assessment that the Claimant lifts his arms to help the homemaker put the gown on. While this is clearly minimal participation, the Claimant is bearing the weight of his arms and can assist with slipping his arms into the gown. Total care would require the homemaker to lift his arms (bearing the weight) and physically pull the sleeves over his arms. Based on the evidence, an additional level of care point cannot be awarded as the Claimant has been appropriately identified as a level-2 in dressing.
- 7) The Claimant's homemaker testified that while she takes care of several grooming needs, the Claimant shaves himself with an electric razor. The homemaker's testimony is consistent with documentation found on the PAS, and while the Claimant requires some assistance with his grooming needs, the Claimant's level of participation, as demonstrated by the evidence, confirms that he is not total care (level-3) in grooming. No additional level of care points can be awarded in the area of grooming.
- 8) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2.1 and 503.2.2: 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 23 points on the PAS completed by WVMI in September 2007 during his annual reevaluation.
- 3) As a result of the evidence presented at the hearing, no additional points were awarded to the Claimant's LOC determination.
- 4) In accordance with existing policy, an individual with 23 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 **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 25th Day of February, 2008.

**Thomas E. Arnett
State Hearing Officer**