



**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 11, 2008

Dear Ms. _____ :

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 6, 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 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
 WVMI

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

,
Claimant,

v.

Action Number: 07-BOR-2190

**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 11, 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 February 6, 2008 on a timely appeal filed September 25, 2007.

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
_____, Homemaker, Kanawha Home Health
_____, RN, Kanawha Home Health
Kay Ikerd, RN, BoSS
Angie Hill, 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:

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 19, 2007
- D-3 Notice of Decision dated September 20, 2007

Claimant's Exhibits:

- C-1 Correspondence from _____ M.D., Dated January 4, 2008

VII. FINDINGS OF FACT:

- 1) On September 19, 2007, the Claimant was medically assessed (Exhibit D-2) to determine continued medical eligibility for participation in the Aged/Disabled Waiver Services Program (ADW) and assign an appropriate Level of Care, hereinafter LOC. 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 September 20, 2007, the Claimant was notified via a Notice of Decision (Exhibit 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 (Exhibit D-2) and testified that the Claimant was awarded 16 points for documented medical conditions that require nursing services. The Department indicated 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 and her witnesses contend that the Claimant remains eligible for a Level "C" LOC as she should have been awarded points in the following areas: #26.a. Eating, #26.h. Transferring, and #26.k. Vision.
- 5) The Claimant was assessed at a level 1 (zero points awarded) in the functional area of eating, however, she testified that she must have misunderstood the question as she requires assistance with cutting up her food due to tremors associated with her Parkinson's diagnosis. The Claimant's homemaker concurred with the Claimant and indicated that she must cut some of the Claimant's food for her. Testimony and documentation presented by the Department indicates that the Claimant was specifically asked during the assessment if her Parkinson's hinders her ability and the Claimant reported that "she may have to stop and reposition the knife/silverware but states she can do it herself." While the Claimant may have some difficulties in this area related to her diagnosis of Parkinson's, the Department fully explored this area during the assessment and appropriately identified the Claimant as a level 1 (self/prompting) in eating. Based on the evidence, the Claimant cannot be awarded any additional points in the area of eating.
- 6) The Claimant purported that she has had cataract surgery on both of her eyes and that her vision is impaired to the point that she can no longer read the newspaper or draw her own insulin. She has made some adaptations by keeping items in a known location. Exhibit D-2 confirms that the Claimant reported that she can no longer read but reported using a magnifying glass to read her mail. Exhibit C-1 confirms that the Claimant has undergone previous cataract surgeries and further states that she also has diabetic retinopathy with multiple laser treatments. According to Dr. [REDACTED] the Claimant's vision is 20/400 in the right eye and 20/60 in the left. Because the Claimant's impaired vision is adversely affecting her functional ability in the home, unable to read or draw her own insulin, two (2) additional points are awarded in section #26.k. (Level 3) for impaired vision /not correctable (+2).

- 7) The Claimant was assessed at a level two (2) in transferring which indicates she requires supervision / assistive device and was awarded one point in this area toward her LOC. The WVMI RN completing the assessment noted transferring difficulties (Exhibit D-2, page 7 of 8) due to the Claimant's bad knees, however, the Claimant was observed transferring and she reported during the assessment that she uses a device attached to her bed to transfer out of bed, and the door knob and a walker in her bathroom to transfer on and off the commode. On page 8 of 8 in Exhibit D-2 the WVMI RN further documented "No report of needing one person assist with transfers or walking in the home." Although there was testimony offered by the Claimant/Claimant's representatives to indicate that she sometimes receives assistance with transferring, the evidence supports a finding that this occasional assistance is a matter of convenience more than necessity. Based on the evidence, no additional points can be awarded to the Claimant's LOC in transferring.
- 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 16 LOC points on a PAS completed by WVMi in September 2007 during her annual reevaluation and was notified that her LOC was being reduced to a Level "B" – 93 hours per month.
- 3) As a result of the evidence presented at the hearing, two (2) additional points are awarded to the Claimant's LOC determination due to a level 3 functional deficit in vision – impaired/not correctable. This brings the Claimant's LOC point total to 18 points.
- 4) In accordance with existing policy, an individual with 18 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 11th Day of February, 2008.

**Thomas E. Arnett
State Hearing Officer**