



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
 Office of Inspector General
 Board of Review
 4190 W Washington Street
 Charleston, WV 25313
 304-746-2360
 Fax #304-558-0851

Joe Manchin III
 Governor

Martha Yeager Walker
 Secretary

February 1, 2008

Dear Ms _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 8, 2008. Your hearing request was based on the Department of Health and Human Resources' proposed decision to deny the request for the increase in level of care from a level "C" to level "D".

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 your 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, 503.2.1 and 503.2.2)

Information submitted at your hearing revealed, after reviewing all points requested by Homemaker RN were Given and the correct total point awards was 25 which is a level C level of care.

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to administer the level of care for _____ as a Level C awarding 124 hours of care per month.

Sincerely,

Jennifer Butcher
 State Hearing Officer
 Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
 Kay Ikerd, RN, BOSS
 _____ Homemaker RN, _____ County COA
 _____ RN, CM _____ County COA
 _____, Daughter of Claimant

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

_____-,

Claimant,

v.

Action Number: 07 –BOR-2330

**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 January 8, 2008 by conference phone 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 January 8, 2008 on a timely appeal filed October 25, 2007.

It should be noted here that the Claimant's benefits have been 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 Witnesses

_____ – Claimant

_____ - Daughter of Claimant

_____ – Homemaker-caregiver

_____ Homemaker RN, _____ Co Commission on Aging

_____ RN, Case Manager, _____ Co Commission on Aging

Department's Witnesses

Kaye Ikerd, RN - Bureau of Senior Services

Presiding at the hearing was Jennifer Butcher, 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 Agency was correct in its decision to assign Claimant to Level "C" Level of Care for the Aged/Disabled Waiver Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual Section 500, 503.2, 503.2.1 and 503.2.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Letter from _____ RN Commission on Aging _____ County dated November 5, 2007 requesting change of Level of Care with three diagnoses to _____'s active diagnosis to BoSS.

D-2 Denial letter from BoSS to Ms _____ dated November 13, 2007 explaining Level of care according to policy is a Level C for a total of 124 hours per month resulting in a total of 24 points.

D-3 Aged/Disabled Home and Community-Based Services Manual Sections 503.2, 503.2.1 and 503.2.2

D-4 Letter from _____ RN Commission on Aging dated October 1, 2007 requesting a change of level of care also attached was medical documentation dated

September 24, 2007 stating Ms _____ needed continuous supervision and total care with her activities of daily living and health care needs.

D-5 Letter from BoSS dated October 16, 2007 denied the upgrade level of care from a "C" to "D" BoSS did award points to total 23 points but still no change in level of care.

Claimant's Exhibits

None

VII. FINDINGS OF FACT:

- 1) _____ 82 year old female was being evaluated on June 26, 2007 for continued care in The Aged/Disabled Waiver Program by Crystal Ellison a Registered Nurse for WV medical Institute (hereafter will be known as WVMI).
- 2) Testimony was given by Ms Ikerd RN for the Bureau of Senior Services on behalf of _____ whom is no longer with the Department, completed a Pre-Admission Screening (D-2) on June 26, 2007 with claimant and her daughter, _____ participating. The evaluating nurse determined that the claimant met the medical eligibility criteria for the AD/W program. Ms _____ was also awarded 124 hours of Level C care.
- 3) Ms Ikard went on to explain the Aged/Disabled Home and Community-Based Services Waiver policy Manual 503.2, 503.2.1 and 503.2.2 (D-1): There are four levels of care for homemaker services. Points will be determined as follows, based on the following sections of the PAS:

- #23- Medical Conditions/Symptoms -1 point for each (can have total of 12 points)
- #24- Decubitis - 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 III 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 Administrations – 1 point for b or c
- #34- Dementia - 1 point if Alzheimer's or other dementia
- #35- Prognosis - 1 point if terminal

The total number of points possible 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

- 4) According to testimony given by Kay Ikerd Claimant was assigned 18 points by the evaluating nurse for documented medical conditions that require nursing services as the result of the re-evaluation completed on June 26, 2007. A level of care (LOC) "C" (18-25 points) was assigned to Claimant making her eligible for four (4) hours per day or 124 hours per month of homemaker services. The following statements 5 through 9 are the categories and points awarded by the WVMI nurse when the PAS was completed.
- 5) Number-**23** Medical Conditions/ Symptoms. Claimant was awarded one point for pain, one point for Mental Disorder and one point for Other.
- 6) The PAS shows number-**25** Vacate in emergency, the claimant was awarded one pint for being unable to vacate.
- 7) The following points were awards on the PAS for Number **26**- Functional Levels:

a. Eating:	level 2- 1 pt
b. Bathing:	level 2- 1 pt
c. Dressing:	level 2- 1 pt
d. Grooming:	level 2- 1 pt
e. Bladder:	level 3- 2 pt
f. Bowel:	level 1- 0 pt
g. Orientation:	level 2- 1 pt
h. Transferring:	level 3- 2 pt
i. walking:	level 3- 2 pt
j. Wheeling:	level 4- 2 pt
k. Vision:	level 2- 0 pt
l. Hearing :	level 2- 0 pt
m. Communication:	level 1- 0 pt

The total of points under this category given was 13.

- 8) Number-**28** Medication Administration; with Prompting/Supervision, one point given for needing Supervision when taking medication.
- 9) Number- **34** Dementia/Alzheimer's, one point was given for Dementia, Depression Disorder.
- 10) The total amount of points awarded to Claimant at the re-evaluation was 18 which is a Level C level of care.
- 11) WVMI sent Claimant notification on July 5, 2007 (**D-3**) advising her of the approval of her re-evaluation with an assigned level of care of 124 hours per month.
- 12) The Homemaker RN from [REDACTED] Co Commission on Aging (COA) [REDACTED] stated she had sent a request dated October 1, 2007 for a change in level of care from assist to total care with **#26.a.**eating, **26.b.** bathing, **26.c.** dressing, **26.d.** grooming. Other request included **#26.m** changing communication from not impaired to impaired, **28** administering medication from prompting/supervision to total assist, and requesting a change in number **23** for Dyspnea, Arthritis, and Pain from no to yes. The above recommendations were accompanied by a signed statement dated September 24, 2007 from Claimant's Medical Physician regarding her condition.

- 13) On October 16, 2007 BoSS returned its decision to deny level of care request from a Level C to Level D. After reviewing information submitted, BoSS did award a new total of 23 points. There was no explanation of how points were awarded, but assuming a point was given for the increase from a level 2 to a level 3 level of care for eating, bathing, dressing, and grooming giving a total of 4 points. No points were given for Dyspnea or Arthritis. A point for pain had already been given on the re-evaluation, but was not counted at that time. That point was added to this request making the total points 23, which is still a level C Level of care.
- 14) On November 5, 2007 another request from [REDACTED] RN from [REDACTED] Co COA was submitted, requesting a change in level of care. The request was for an addition of three diagnoses to her active diagnosis. Number 23.c dyspnea, number 23.d. significant arthritis and number 23.h. pain.
- 15) BoSS responded with their decision on November 13, 2007 stating change in level of care has been denied, but the information submitted resulted in a total of 24 points being given. Again there was no explanation of what category the point was given. According to the request the point should have been for either Dyspnea or Arthritis. The amount of points does not change the level of care from a C to D.
- 16) The claimant's Homemaker RN Ms [REDACTED] stated in her testimony that Ms [REDACTED] had awarded points on the October 16, 2007 request then taken them off the evaluation. Ms Ikerd did not know of any policy in which points could be taken away once they have been given.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that an individual's Level of Care for the Aged/Disabled Waiver Program is determined by the number of points the individual obtains on the PAS.
- 2) According to testimony by Ms Ikerd, 18 points were awarded at the time of the July 28, 2007 assessment. After reviewing evidence Claimant should have been awarded 19 points at the re-evaluation in July 2007, no point was given for pain.
- 3) The Homemaker RN submitted requests for additional points on October 1 and November 1, 2007. The first request was for additional points for total care of number 26 eating, bathing, dressing and grooming .A change from not impaired to impaired for communication and prompting /supervision to total assist in administering medications. The second request was for additional points for Dyspnea Arthritis and Pain. The Departments response to the first request was to increase the total points to 23, and the second request was to increase total points to 25.
- 4) According to policy in Chapter 503.2.2 of the Aged and Disabled Waiver Services Manual on Level of Care Limits; Level C Care is based on points ranging from 18-25 giving 4 hours of care per week and totaling 124 hours per month.
- 5) After evaluating all testimony and exhibits and distributing points correctly the Hearing Officer finds that a total of 25 points should have been counted in determining Claimant's Level of Care. This results in no change in the Level of Care assigned by the Department for this period of time.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's decision to award the Claimant 124 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 day, of , 2008.

**Jennifer Butcher
State Hearing Officer**