



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 W Washington St
Charleston, WV 25313
304-746-2360 Ext 2227**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

December 22, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 12, 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 Hearings 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 (HCB) Title XIX Waiver Services 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 WVM. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual 503.2, 503.2.1 and 503.2.2)

The information which was submitted at your hearing revealed that your level of care should be increased to a level C from a level "B" level of care. As a result, you are eligible to receive four (4) hours per day / 124 hours per month of homemaker services.

It is the decision of the State Hearings Officer to reverse the proposal of the Department to reduce your homemaker service hours under the Medicaid Title XIX (HCB) Waiver Program.

Sincerely,

Jennifer Butcher
State Hearings Officer
Member, State Board of Review

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

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

_____,

Claimant,

v.

Action Number: 08-BOR-2462

**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 22, 2008 for [REDACTED]. 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 November 12, 2008 on a timely appeal, filed April 26, 2008.

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 services of the Waiver Program as opposed to being institutionalized.

III. PARTICIPANTS:

Claimant's witnesses

_____, Claimant, Participating by Phone

_____, Central West Virginia Aging, Homemaker RN

_____, Central West Virginia Aging, Case Manager

Department witnesses participating by phone

Kay Ikerd, Bureau of Senior Services (BoSS), RN

Paula Clark, West Virginia Medical Institute, (WVMI), RN

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 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:

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 and 503.2.2
- D-2 Pre-Admission Screening (PAS) assessment completed on April 11, 2008
- D-3 Notice of Decision dated April 14, 2008
- D-4 Additional medical information from Dr. [REDACTED] M.D. office dated April 16, 2008
- D-5 Notification letter from Central West Virginia Aging Services dated July 28, 2008, requesting to withdraw from the hearing.
- D-6 Notification letter from Central West Virginia Aging Services dated August 4, 2008, requesting to reinstate the hearing request.
- D-7 Updated Hearing request form dated September 23, 2008

Claimants' Exhibits:

- C-1 Updated copy of additional medical information from the office of Dr. [REDACTED]
M. D. dated August 20, 2008

II. FINDINGS OF FACT:

- 1) On April 11, 2008 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) for homemaker services. In attendance for the reassessment were the Claimant, her homemaker, Homemaker RN, [REDACTED] Case Manager _____, and the WVMI Nurse, Stacy Holstein.
- 2) The Claimant was assigned 16 points by the evaluating WVMI nurse for documented medical conditions that require nursing services. A LOC "B" (10-17 points) was assigned to Claimant making her eligible for three (3) hours per day or 93 hours per month of homemaker services. It should be noted that the Claimant previously qualified as a LOC "C" (18-25 points) - eligible for four (4) hours per day or 124 hours per month of homemaker services.
- 3) On April 14, 2008, 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 was reduced to 93 (Level "B" LOC).
- 4) On April 16, 2008, additional medical information (Exhibit -4) was submitted to WVMI stating the Claimant was diagnosed with Chronic Obstructive Pulmonary Disease (hereinafter COPD), arthritis, and bowel incontinence.
- 5) The initial hearing request was received by the Department on May 19, 2008. The hearing was scheduled for July 29, 2008, at the Bureau of Senior Services. On July 28, 2008, the Board of Review received notification from Central West Virginia Aging Services that the Claimant's level of care had increased from Level B to a Level C. The Claimant was satisfied with the increase and wanted to withdraw her request for the hearing that was scheduled for July 29, 2008, (Exhibit D-5).
- 6) On August 4, 2008, Central West Virginia Aging Services notified the Board of Review of an error in the withdrawal for the hearing that was scheduled for July 29, 2008. When the Pre-Admission Screening Form (hereinafter PAS) was re-evaluated by the West Virginia Medical Institute (hereinafter WVMI) Nurse, noticed on page six (6) of the form was dated May 23, 2007, with a Level of Care as a "Level C". The date on the current PAS was April 11, 2008 with a Level of Care as "Level B". Therefore the Claimant retracted her withdrawal on July 28, 2008.
- 7) A new hearing request was submitted to the Board of Review on August 23, 2008, and the hearing convened on November 12, 2008.

- 8) The Claimant's representatives are advocating points should be awarded under number twenty-three (23) Medical Conditions/Symptoms for Dyspnea and under number twenty-six (26) Functional Levels and state that extra points should have been awarded for incontinent of bowel, transferring, walking, and bathing.
- 9) The Case Manager, Ms Casebolt, testified the Claimant has shortness of breath. The additional medical information (Exhibit-4) submitted on April 16, 2008 from Dr. [REDACTED] states, "Claimant has a diagnosis of COPD, Arthritis, and Bowel Incontinence." The WVMi nurse was unable to use the additional medical information because the signature on the prescription form was not of the treating physician, but from the office assistant. When the WVMi nurse contacted Dr. [REDACTED] office to verify the diagnosis, the office assistant stated the documentation in the Claimant's chart did not have a diagnosis of COPD. Therefore Dyspnea could not be given under the Medical Conditions/Symptoms section, number twenty-three (23).

Section number twenty-six (26) Functional Levels: indicates the individual's functional ability in the home. The Claimant's representatives believe points should have been awarded for Bowel Incontinence. No substantial evidence was presented to advocate incontinent of bowels, therefore no additional points were awarded.

Transferring: The Claimant has a documented medical condition of Osteoporosis which makes it difficult for her to transfer from a seated position to a standing position. During the assessment the WVMi nurse asked the Claimant to demonstrate to her how she transfers in and out of the bath tub. While transferring to the tub, the Claimant became unstable and the chair moved leaving the Claimant needing physical assistance from her homemaker to complete the transfer. According to the assessment, the Claimant was given a level two (2) (Supervised/ Assistive Device) with one point. With the evidence and testimony provided a level three (3) will be awarded for one-person or two – person assistance in home.

Walking: The Claimant's representatives testified she has an unstable gait and she has fallen several times in the month of March of 2008, but according to the case management agency only one incident was documented. It was also documented on the assessment the Claimant's gait is unstable. The assessment stated that the Claimant uses an assistive device with walking. No additional points can be awarded for walking.

Bathing: Testimony from the Case Manager indicated the Claimant needs assistance with her bathing. She is not able to wash her back and when she is having a bad day and her pain is too severe, she is not able to bend over and wash her feet and legs. The WVMi nurse also documented the Claimant needed homemaker to wash her back and when she was in severe pain, the homemaker would wash her legs and feet for her. By the clear evidence and the testimony presented, the Claimant will be awarded an additional point which will place her as a level three (3) (physical assistance).

- 10) 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

#35 - 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 points on a PAS completed by WVMi in April, 2008 during her annual reevaluation.
- 3) As a result of the evidence presented at the hearing, two (2) additional points were awarded to the Claimant's LOC determination.
- 4) In accordance with existing policy, an individual with 18 points qualifies as a level "C" LOC and, therefore is 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 22nd Day of December, 2008.

**Jennifer Butcher
State Hearing Officer**