



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

March 27, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 25, 2008. Your hearing request was based on the Department of Health and Human Resources' level of care determination for homemaker service hours through 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 WVM. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual 503.2)

Information submitted at the hearing reveals that your Level of Care should be increased to a level "D" level of care. As a result, you are eligible to receive five (5) hours per day / 155 hours per month of homemaker services.

It is the decision of the State Hearing Officer to **reverse** the Department's LOC determination and increase your homemaker service hours to 5 hours per day / 155 hours per month.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Peer Advocate, NWVCIL
BoSS
WVMI

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

_____,
Claimant,

v.

Action Number: 07-BOR-2467

**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 March 27, 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 March 25, 2008 on a timely appeal filed November 13, 2007.

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
_____, Claimant's mother
██████████ Peer Advocate, NWVCIL

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's Level of Care (LOC) / homemaker service hours determination at a level "C" is correct.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 503.2, 503.2.1, 503.2.2 and Attachment 14

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 October 10, 2007
- D-3 Notice of Decision dated October 29, 2007

Claimant's Exhibits:

- C-1 Claimant's Daily Schedule

VII. FINDINGS OF FACT:

- 1) On October 10, 2007, the Claimant was medically assessed (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.
- 2) On or about October 29, 2007, the Claimant was notified via a Notice of Decision (D-3) that he continues to be medically eligible for participation in the ADW Program and the number of homemaker service hours approved cannot exceed 124 hours per month.

- 3) The Claimant contends that while his LOC was not reduced as a result of the October 10, 2007 PAS, he believes that he should have been assessed at a LOC “D,” and therefore eligible to receive homemaker service hours at 5 hours per day / 155 hour per month.
- 4) The Registered Nurse (RN) who completed the assessment is no longer employed with WVMJ and was not available to participate in the hearing. The Claimant was provided the option to proceed with his appeal or undergo a new medical assessment. As a matter of record, the Claimant indicated that he wished to proceed with his appeal. Therefore, this decision will focus solely on the LOC determination resulting from the October 10, 2007 PAS (D-2).
- 5) The Department’s representative, Kay Ikerd, RN, from the Bureau of Senior Services (BoSS) reviewed the Pre-Admission Screening (PAS) form (D-2) and testified that the Claimant was awarded 24 points for documented medical conditions that require nursing services. She indicated that this finding is consistent with a LOC “C,” making the Claimant eligible for 4 hours per day / 124 hours per month of homemaker services.
- 6) The Claimant contends that he should have been awarded an additional point in section #26.m (Communication). The Claimant was assessed at a **level 2**, impaired/understandable, in Exhibit D-2, and according to Attachment 14 in the ADW Policy Manual, a **level 3** in communication is “understandable with Aids” and **level 4** is “inappropriate/none.” The Claimant has a tracheostomy that requires a balloon mechanism at or near his vocal cords and while the Claimant is able to leave the balloon deflated during the day, the balloon must be inflated at night which renders him unable to speak. His mother must sleep in the same room as him so that she can hear him if he needs assistance. Testimony further reveals that the Claimant is only able to get his mother’s attention by making a clicking noise with his mouth. His mother must then go through a list of questions to determine his needs, to which he responds with one (1) click for yes and two (2) clicks for no. Because the Claimant’s physical limitations have progressed due to his Muscular Dystrophy, he is unable to write notes, use sign language or let his needs be known by any other method. The Claimant’s mother testified that there are times when she cannot determine what her son is trying to communicate.

The communication finding on the assessment is reasonable based on the Claimant’s ability to communicate during the day, however, the evidence indicates that the Claimant has only limited communication skills at night with the aid of a clicking system that sometimes fails. Although the Claimant cannot use an assistive device due to his physical limitations (as required for level 3), there are occasions when he and his mother are unable to communicate. Based on the evidence, the Claimant demonstrates communication impairment (at night) greater than the level 2 criteria, he would use aids but for his physical limitations, and there are occasions when he is unable to communicate. Therefore, the Claimant is demonstrating communication impairment at a level 3 or 4 which merits the assignment of two (2) additional LOC points.

- 7) 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 24 points on a PAS completed by WVMI in October 2007 during his annual reevaluation and was assigned a Level "C" level of care.
- 3) As a result of the evidence presented at the hearing, two (2) additional points are awarded to the Claimant's LOC determination for a total of 26 points.
- 4) In accordance with existing policy, an individual with 26 points qualifies as a level "D" LOC and therefore eligible to receive 5 hours per day or 155 hours per month of homemaker services.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Department's LOC determination and increase your homemaker service hours to 5 hours per day / 155 hours per month.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 27th Day of March, 2008.

Thomas E. Arnett
State Hearing Officer