



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

May 29, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 28, 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 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 reduced from a Level AC@ to a Level "B" Level of Care. As a result, you are eligible to receive three (3) hours per day / 93 hours per month of homemaker services.

It is the decision of the State Hearing Officer to **uphold** 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

Pc: Erika H. Young, Chairman, Board of Review
BoSS
CCWV
WVMI

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

_____,
Claimant,

v.

Action Number: 08-BOR-909

**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 May 29, 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 May 28, 2008 on a timely appeal filed February 21, 2008.

It should be noted that the Claimant's benefits have continued at the pre-hearing level pending a hearing decision.

All parties were placed under oath.

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
_____, CM, Catholic Charities of WV (CCWV)
_____, Claimant's daughter
_____, Claimant's granddaughter
Kay Ikerd, RN, BoSS
Debra LeMasters, RN, WVMU

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 December 12, 2006
- D-3 Notice of Decision dated January 3, 2007

VII. FINDINGS OF FACT:

- 1) On February 11, 2008, 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 for homemaker services. It should be noted that the Claimant was receiving homemaker services at a Level "C" LOC at the time of the reevaluation.

- 2) On or about February 12, 2008, the Claimant was notified via a Notice of Decision (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 (D-2) and testified that the Claimant was awarded 15 points for documented medical conditions that require nursing services. She testified 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 representatives contend that the Claimant should remain a level "C" as she should have been awarded three additional points in the areas of incontinence of bowel (should be level 2, occasional incontinence); medication administration (cannot administer her own medications); and Professional and technical care needs (use of oxygen). If the Claimant would have been awarded these points, she would have accumulated 18 points and would remain a Level "C" LOC.
- 5) The Claimant purported that she suffers from diarrhea two (2) or three (3) times per week. While the Claimant may demonstrate abnormal bowel function at times, there was no testimony or clinical documentation submitted to indicate that her condition results in episodes of bowel incontinence. Furthermore, the Claimant reported during the assessment that she was continent of bowel. Based on the evidence, the PAS assessment completed on February 11, 2008 correctly identified the Claimant's bowel function as a level 1 (continent).
- 6) The Claimant's ability to self-medicate is somewhat questionable due to her hand tremors, however, at this time she only requires prompting and supervision and this does not qualify for any points.
- 7) In order for an individual to receive a point under section #27 (Professional and Technical Care needs) for use of oxygen, the individual must require "continuous oxygen." The WVMI RN documentation and testimony was confirmed in testimony received from the Claimant. The Claimant uses oxygen at night and during the day "as needed." Based on the evidence, the Claimant does not qualify for a point for oxygen use.
- 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 15 points on a PAS completed by WVMI in February 2008 during her 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 15 points qualifies as a level "B" LOC and therefore eligible to receive 3 hours per day or 93 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 29th Day of May, 2008.

**Thomas E. Arnett
State Hearing Officer**