



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
Post Office Box 2590  
Fairmont, WV 26555-2590

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

August 30, 2006

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Mr. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 29, 2006. Your hearing request was based on the Department of Health and Human Resources' reduce your Homemaker service hours under the Medicaid Title XIX (Home & Community-Based) Waiver 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.

One of these regulations specifies that for the Aged and Disabled Waiver Program, the number of Homemaker service hours is determined based on your Level of Care (LOC). The ALevel 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 & 570.1}

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  
WVMi  
Health Consultants Plus

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

\_\_\_\_\_,  
**Claimant,**

**v.**

**Action Number: 06-BOR-1068**

**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 September 1, 2006 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 August 30, 2006 on a timely appeal filed February 7, 2006.

It should be noted here that the Claimant's benefits have continued pending a hearing decision.

**II. PROGRAM PURPOSE:**

The Program entitled **Medicaid Title XIX Waiver (HCB)** 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 - (participated telephonically)  
\_\_\_\_\_, CM, Health Consultants Plus  
\_\_\_\_\_, RN, Helping Hands  
Libby Boggess, RN, BoSS - (participated telephonically)  
Jennie Sutherland, LSW, BoSS - (observed telephonically)  
\_\_\_\_\_, RN, WVMI, - (participated telephonically)

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 to be decided is whether the agency is correct in their proposal to reduce the Claimant=s Homemaker service hours under the Medicaid Title XIX Waiver (HCB) Program.

### **V. APPLICABLE POLICY:**

Medicaid, Aged/Disabled (HCB) Waiver Services Policy Manual 503 & 570.1.b & 570.1.c

### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

#### **Department's Exhibits:**

- D-1 Medicaid, Aged/Disabled (HCB) Waiver Services Policy Manual 503 & 570.1.b & 570.1.c
- D-2 Medical Assessment, PAS 2005 dated 1/19/06
- D-3 Physicians Referral to ADW Program dated 11/8/05
- D-4 Notice of Decision dated January 26, 2006

#### **Claimants' Exhibits:**

- C-1 Correspondence from \_\_\_\_\_, dated 8/17/06.

### **VII. FINDINGS OF FACT:**

- 1) On January 19, 2006, the Claimant was medically assessed (D-2) to determine continued medical eligibility and assign an appropriate Level of Care, hereinafter LOC, for participation in the Aged/Disabled Waiver Services Program (ADW Program). It should be noted that the Claimant was receiving Homemaker Services at a level AC@ LOC at the time of the evaluation.
- 2) On January 26, 2006 the Claimant was notified via a Notice of Decision (D-4) that he 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) Julia Foster reviewed the PAS-2005 (D-2) and testified that the Claimant was awarded 14 points for documented medical conditions that require nursing services. She testified that this finding is consistent with a level of care LOC "B," making the Claimant eligible for 3 hours per day or 93 hours per month of homemaker services.
- 4) The Claimant and his representatives contend that he should have been awarded an additional point for significant arthritis, dyspnea, angina at rest and exertion, wheeling (level-3), bladder incontinence (level-3), medication administration and dementia.
- 5) Evidence received at the hearing indicates that the Claimant presents a history of significant arthritis with severe chronic pain. While the information included in exhibit C-1 was not made available to WVMI at the time of the assessment (as noted in the Department's objection), in the absence of policy prohibiting the submission of additional medical documentation and the fact that a LOC determination can be reviewed at anytime, for the purpose of this appeal, Exhibit C-1 is both relevant and credible in determining the Claimant's appropriate LOC. Documentation found in Exhibit C-1, in conjunction with testimony received at the hearing, reveals that one point (+1) should be added to the Claimant's LOC determination for significant arthritis.
- 6) The Department contends that the Claimant does not suffer from dyspnea as it was not provided on the Physician's Referral (Exhibit D-3) and the Claimant is not on any medications to treat this condition. Testimony received on this issue, however, reveals that the Claimant's diagnoses presently include CAD (Coronary Artery Disease), MI (myocardial infarction) and he has a history of COPD. These conditions, according to [REDACTED], RN, cause dyspnea. When considering the Claimant's overall medical condition with the diagnoses noted by RN [REDACTED] the evidence supports the conclusion that the Claimant experiences dyspnea. Based on evidence, one point (+1) is added to the Claimant's LOC determination for dyspnea.
- 7) Documentation found on page 1 of 5 of Exhibit D-2 reveals that the Claimant reported infrequent mild chest pain during the assessment and indicated that he used to be prescribed nitroglycerin but he has been unable to take it for about one year due to low blood pressure. While the Department contends that chest pains can have multiple origins, the Claimant's medical diagnoses of CAD and MI are known to cause chest pain and the Claimant would have continued to be prescribed nitroglycerin if it was not for his low blood pressure. Based on the evidence, the Claimant has angina at rest and exertion. Two (+2) additional points are therefore awarded to the Claimant's LOC determination.
- 8) Testimony received in support of an additional point in wheeling reveals that the Claimant, at the time of the medical assessment, lived in a home with an area that had uneven flooring. This, according to the Claimant, caused him to require situational / occasional physical assistance with wheeling because he was not strong enough to roll over the uneven surface. He stated that the alternative route that the Department contends he could have traveled independently was too narrow and his wheelchair would get stuck. Because there is no evidence to indicate that the Claimant was required to demonstrate he could manipulate his wheelchair through the alternative passageway, and the Claimant and RN [REDACTED] testified that he could not, an additional point (+1) must therefore be awarded in wheeling (level-3).

- 9) In order for an individual to be consider total incontinent of bladder (level-3) the individual must be totally incontinent of bladder at all times. The evidence in this case reveals that the Claimant experiences on average one episode of bladder incontinence a day. The Department stated that this could not qualify as total incontinence as the average person must urinate several times on a daily basis. Based on the evidence, no additional points can be awarded in bladder incontinence as the Claimant has been appropriately assessed at a level-2 (less than total incontinence).
- 10) There is insufficient evidence to indicate that the Claimant is unable to administer his own medications. By the Claimant's own testimony, he has difficulty opening the pill container but he can do it in the absence of any assistance. An individual can only be determined unable to administer their own medications if prescription medications must be placed in their hand, mouth, tube or eye by some one else at all times. Based on the evidence, no additional points can be awarded in medication administration.
- 11) There is no evidence to indicate that the Claimant presents a diagnosis of dementia. Without a medical doctor's diagnosis, a point cannot be awarded in this area. No additional points can be awarded in section #33 for dementia.
- 12) Aged/Disabled Home and Community Based Service Manual 570.1.c & 570.1.d:  
There are four levels of care for clients of ADW Homemaker services. Points will be determined as follows, based on the following sections of the PAS 2005:
  - #23 1 point for each (can have total of 12 points) Medical Condition
  - #24 1 point Decubitus
  - #25 Level 1 - 0 points Functional levels  
Level II - 1 point for each item A through I  
Level III - 2 points for each item A through M; I (walking) must be equal to or greater than III before points given for J (wheeling)  
Level IV - 1 point for A, 1 point for E, 1 point for F, 2 points for G through M
  - #26 1 point for continuous oxygen
  - #27 - 1 point for "NO" answer – medication administration
  - #33 - 1 point if Alzheimer's or other dementia
  - #34 - 1 point if terminal

Levels of Care Service Limits:

Level A	5-9 points	62 Hours per Month
Level B	10-17 points	93 Hours per Month
Level C	18-25 points	124 Hours per Month
Level D	26-44 points	155 Hours per Month

## 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 2005.

- 2) The Claimant received 14 points on a PAS completed by WVMI in January 2006 in conjunction with an annual reevaluation.
- 3) Evidence presented at the hearing resulted in the Claimant being awarded five (5) additional points for a total of 19.
- 4) In accordance with existing policy, an individual with 19 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 30th Day of August, 2006.**

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**Thomas E. Arnett  
State Hearing Officer**