



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

April 4, 2006

_____ for

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 7, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your mother's 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 services hours is based on your Level of Care (LOC). The "Level of Care" is determined by an evaluation completed on the Pre-Admission Screening Form (PAS) and points are assigned 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 520 & 570.1).

The information submitted at your hearing reveals that you continue to be eligible to receive homemaker services at a Level "D" LOC - five (5) hours per day / 155 hours per month of homemaker services.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Agency 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
Fuzzy Page, Esq., Assistant AG's Office, DHHR
Kevin Pearl, Esq.

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

_____,

Claimant,

v.

Action Number: 05-BOR-6297

**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 April 4, 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 originally scheduled for November 9, 2005 but was rescheduled and convened on March 7, 2006 on a timely appeal, filed July 19, 2005.

It should be noted here that the claimant's benefits and services under the Medicaid Title XIX Waiver (HCB Program) have been 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:

Kevin Pearl, Esq., Counsel for the Claimant
_____, Claimant's daughter and POA
Dr. _____, D.O., Claimant's granddaughter / physician
_____, RN, _____ Health Care
_____, RN, CM, Five Star Case Management
Fuzzy Page, Esq., Assistant AG's Office, DHHR (Participated telephonically)
Kay Ikerd, RN, BoSS, (Participated 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(s) to be decided is whether the agency is correct in their proposal to reduce the Claimant's homemaker services hours under the Medicaid Title XIX Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled and Community-Based Services Waiver Policy manual 570 & 580

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Waiver Policy Manual 570 & 580.
- D-2 Pre-Admission Screening form, PAS-2000, dated June 30, 2005.
- D-3 Notice of Decision dated July 5, 2005.

VII. FINDINGS OF FACT:

- 1) The Claimant's annual medical evaluation (exhibit D-2) was completed by WVMI on June 30, 2005 to verify continued medical eligibility for participation in the Aged and Disabled Waiver Program and to confirm the appropriate Level of Care, hereinafter LOC.
- 2) The Claimant was receiving homemaker services at a level "D" LOC (5 hours per day / 155 hours per month) at the time of the evaluation.

- 3) On July 5, 2005, the Claimant was notified via a Notice of Decision (D-3) that continued medical eligibility was established, however, the number of homemaker service hours for which she was approved (124 hours per month - LOC "C") was less than the amount she was receiving (155 hours per month - LOC "D") at the time of the reevaluation. The Claimant's appeal is based on the Department's proposal to reduce her homemaker service hours.
- 4) [REDACTED] reviewed the PAS-2000 (D-2) and testified that the Claimant was awarded 23 points for documented medical conditions that require nursing services. She testified that these findings are consistent with a LOC "C," indicating that the Claimant is eligible for 4 hours per day or 124 hours per month of homemaker services.
- 5) The contested findings on the PAS, specific to a LOC determination, include: Bathing (should be level 3), Dressing (should be level 3), Grooming (should be level 3), Transferring (should be level 3), Walking (should be level 3), Wheeling (only that she uses a wheelchair), Medication Administration (cannot administer), and Prognosis (should be terminal).
- 6) The Claimant frequently experiences spillage from her spoon when eating due to tremors in her hands. Credible testimony received at the hearing reveals that while the Claimant can sometimes feed herself, she requires total care with eating the majority of the time. Based on this finding, #26(a) eating is a level 3 and one additional point (+1) is awarded.
- 7) Testimony received at the hearing reveals that the Claimant can participate in bathing "until she gets physically exhausted." In addition, documentation on the PAS indicates that the Claimant washes her own face and uses a handheld shower sprayer to assist in rinsing off. Based on this evidence, the Claimant participates in bathing and has been appropriately assessed at a level 2. No additional points can be awarded in bathing.
- 8) The Claimant's ability to participate in dressing is limited by her tremors, bad shoulder and poor stamina, however, the Claimant is able to participate in dressing "until she gets exhausted." In order for an individual to qualify for a point in this area, an individual cannot participate at any level and must require total care. Based on this finding, a point cannot be awarded in dressing.
- 9) Evidence received from the Department indicates that the Claimant is total care in all areas of grooming except that she is able to manage her own mouth care. Because the Claimant was assessed at being able to manage her own mouth care, and therefore able to participate in grooming, the WVMI RN assessed the Claimant's grooming at a level 2. However, credible testimony received at the hearing reveals that the Claimant was not able to clean or take care of her dentures at the time of the assessment. This finding changes grooming to a level 3 (total care) and an additional point (+1) is therefore awarded.

- 10) The Claimant requires more than prompting and supervision in the area of medication administration, however, for purposes of a LOC determination, an individual cannot receive more than one point in this area regardless if they are a level B (prompting and supervision) or level C (cannot self-administer medications). An additional point cannot be awarded in Medication Administration.
- 11) In accordance with the documentation included on the PAS, the Claimant ambulated in a slow, shuffle-type motion during the assessment. She used her cane, the walls and furniture for assistance to ambulate in her residence. In addition to the observations of Ms. [REDACTED] the Claimant was reported to be in her chair in the morning when the homemaker arrives. It was noted that the Claimant has difficulty with fatigue when ambulating, but because the Claimant's residence was small and she was not required to ambulate long distances, the evidence indicates she was able to ambulate without physical assistance in her residence. An additional point cannot be awarded in walking.
- 12) In her medical assessment, RN [REDACTED] identified contributing medical factors and noted the degree of difficulty, and effort, exhibited by the Claimant when transferring and ambulating. The Claimant, at the time of the assessment, was able to transfer with the assistance of her cane and using her arms to help push-up off of furniture. Further evidence that the Claimant was able transfer without physical assistance is the undisputed documentation in the PAS – "Per HM she is sitting in chair in morning when they arrive." Difficulty with transferring was noted, but physical assistance was not required. While testimony confirms that the Claimant's health significantly deteriorated 3 weeks after the assessment date and that a wheelchair was being used to transfer the Claimant from room-to-room, there is insufficient evidence to indicate that the Claimant required physical assistance to transfer, or the use of a wheelchair, in her home at the time of the assessment.
- 13) The Claimant's prognosis, found under #35 of the PAS, is provided by their physician on the physician referral form and is transcribed to the PAS by the WVMJ RN. Dr. _____ testified that she provided the prognosis of deteriorating but indicated that her grandmother is in Class IV heart failure and therefore terminal. She stated that whether it (death) is expected to occur in six months or a year, hospice can provide services for up to two years. Based on this evidence, an additional point (+1) is awarded under section #35 (prognosis is terminal).
- 14) The Aged/Disabled Home and Community Based Services Manual 580.2 & 580.2,b – provides that a medical eligibility reevaluation may include either a periodic or annual reevaluation. The purpose of the reevaluation is to confirm and validate an individual's continued medical eligibility for ADW services and to establish whether there is any change in the LOC the individual requires. All clients must be evaluated at least annually.

15) Aged/Disabled Home and Community Based Services Manual § 570.1.c & d. - Level of Care Criteria:

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:

- #23 1 point for each (can have total of 12 points)
- #24 1 point
- #25 1 point for B, C, or D
- #26 Level 1 - 0 points
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
Level 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
- #27 - 1 point for continuous oxygen
- #28 - 1 point for B or C
- #34 - 1 point if Alzheimer's or other dementia
- #35 - 1 point if terminal

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) Individuals who medically qualify for the Aged and Disabled Waiver Services Program are evaluated and assigned a Level of Care, A thru D.
- 2) The Level of Care is determined by assigning points to qualifying documented medical findings on the PAS-2000.
- 3) The medical assessment (PAS-2000) completed by WVMI on June 30, 2005 assigned 23 points to the Claimant's qualified medical conditions and determined that she was a Level of Care "C," eligible for 4 hours per day or 124 hours per month of homemaker services.
- 4) Evidence received at the hearing supports the assignment of three (3) additional points - Eating (increased to level 3), Grooming (increased level 3), and Prognosis is terminal. This finding brings the Claimant's point total to 26.
- 5) Policy provides that an individual assigned 26 points qualifies as a level "D" LOC and therefore eligible for 5 hours per day or 155 hours per month of homemaker services.

IX. DECISION:

After reviewing the information presented during the hearing, and the applicable policy and regulations, I am ruling to **reverse** the proposal of the Agency to reduce the Claimant's homemaker services hours to a level "C". The Claimant continues to be level "D" LOC, and is therefore eligible for 5 hours per day or 155 hours of homemaker services per month.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 4th Day of April 2006.

**Thomas E. Arnett
State Hearing Officer**