



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

March 6, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 1, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce you 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 which was submitted at your hearing revealed that while you continue to require the degree of care and services necessary to qualify medically for the Aged & Disabled Waiver Program, your documented medical conditions confirm that your Level of Care should be reduced from a Level "C" to a Level "B" Level of Care rating. 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

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
_____, CM, Family Service Upper Ohio Valley

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

_____,
Claimant,

v.

Action Number: 05-BOR-6592

**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 6, 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 February 1, 2006 on a timely appeal, filed September 7, 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:

[REDACTED], Claimant
[REDACTED], Homemaker, [REDACTED] Senior Center
[REDACTED] Case Manager, Family Service Upper Ohio Valley
Kay Ikerd, RN, BoSS, (by phone from BoSS)
[REDACTED], RN, WVMI (by phone from her home)

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 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 21, 2005.
- D-3 Notice of Decision dated June 28, 2005.

Claimant's Exhibits:

- C-1 Correspondence from [REDACTED]

VII. FINDINGS OF FACT:

- 1) The Claimant's annual medical evaluation was completed on June 21, 2005 by West Virginia Medical Institute, hereinafter WVMI, to verify eligibility for continued participation in the Aged and Disabled Waiver Program and to confirm the appropriate Level of Care, hereinafter LOC.
- 2) The results of the medical assessment were documented in a PAS-2000 which has been identified as exhibit D-2. It should be noted that the Claimant was receiving homemaker services at a level "C" LOC (4 hours per day / 124 hours per month) at the time of the evaluation.

- 3) On June 28, 2005, a Notice of Decision (D-3) was sent to the Claimant. This notice states, in pertinent part:

The West Virginia Medical Institute (WVMI) is the Quality Improvement Organization (QIO) authorized by the Bureau of Medical Services of the West Virginia Department of Health and Human Resources to determine medical necessity for the Aged and Disabled Waiver Program. You have been determined medically eligible to continue to receive in-home services under the Aged and Disabled Waiver Program. The number of homemaker services hours approved is based on your medical needs and cannot exceed 93 hours.

- 4) [REDACTED] reviewed the PAS-2000 (D-2) and testified that the Claimant was awarded 17 points for documented medical conditions that require nursing services. She testified that these findings are consistent with a level of care (LOC) "B," indicating that the Claimant is eligible for 3-hours per day or 93 hours per month of homemaker services.
- 5) Kay Ikerd testified that the WVMI RN erroneously awarded one (1) point to the Claimant in section #26(j) wheeling. Policy states that a point is only given for Level II findings in sections A through I (J is obviously not inclusive). The Claimant was assessed to wheel independently (level II), and she is only eligible to receive a point in wheeling if she is a level III or higher. Because this change is the result of an incorrect policy interpretation, and not a medical finding, the Department's proposal to rescind a point (-1) in section #26(J) at the hearing is appropriate.
- 6) The Department's request to have the record remain open to verify a terminal prognosis, as recorded in section #35, was denied. [REDACTED] acknowledged that she somehow missed this finding and did not assign a point in this area. Testimony reveals that a terminal prognosis was provided by the Claimant's physician on the Case Management Referral Form and verification of this medical finding should have occurred at the time of the assessment. As a result, an additional point (+1) is awarded in section #35.
- 7) 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.

8) 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 21, 2005 assigned 17 points to the Claimant's qualified medical conditions and determined that she was a Level of Care "B" - eligible for 3-hours per day or 93-hours per month of homemaker services.
- 4) Evidence received at the hearing supports the loss of one (-1) point in section 26(J) "wheeling" and the assignment of one point (+1) in section #35 "prognosis" that was previously not counted. This finding, however, results in the Claimant's point total remaining at 17.

- 5) Policy provides that an individual assigned 17 points qualifies as a level "C" LOC and therefore eligible for 3 hours per day or 93 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 **uphold** the proposal of the Agency to reduce the Claimant's homemaker services hours to a level "B" - eligible for 3 hours per day or 93 hours of homemaker service per month.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 6th Day of March 2006.

Thomas E. Arnett
State Hearing Officer