



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

May 30, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 14, 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 submitted at your hearing reveals that you continue to be eligible for homemaker services at a Level of Care D - five (5) hours per day / 155 hours per month.

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
Health Consultants Plus

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

_____,
Claimant,

v.

Action Number: 05-BOR-6706

**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 30, 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 April 14, 2006 on a timely appeal, filed September 28, 2005.

It should be noted here that the Claimant's benefits and services under the Medicaid Title XIX Waiver (HCB) Program have continued at the pre-hearing level.

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:

██████████ CM, Health Consultants Plus (Claimant Representative)
██████████ RN, Helping Hands
_____, Claimant's daughter / homemaker
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 September 1, 2005.
- D-3 Notice of Decision dated September 12, 2005.

VII. FINDINGS OF FACT:

- 1) The Claimant's annual medical reevaluation (exhibit D-2) was completed on September 1, 2005 to verify 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 September 12, 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 124 hours.

- 4) [REDACTED] RN, WVMI, reviewed the PAS-2000 (D-2) and testified that the Claimant was awarded 25 points for documented medical conditions that require nursing services. She testified that these findings are consistent with a level of care (LOC) "C," indicating that the Claimant is eligible for 4 hours per day or 124 hours per month of homemaker services.
- 5) Representatives speaking on behalf of the Claimant contend that she should remain a LOC "D." The Claimant received a point under section (23a) for Angina at rest, however, testimony received at the hearing reveals that the Claimant also suffers Angina during exertion (23b), particularly when she must get on the bedside commode. This information appears both credible and logical, and an additional point is therefore awarded (+1).

Additional testimony and documentation was received in support of points in the areas of orientation (#26g) and decubitus (#24) (also see exhibit C-1), but because only one additional point was needed to establish the number of points required to remain a level D (26 points), those areas will not be addressed in this decision.

- 6) 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.

7) 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 September 1, 2005 assigned 25 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 support the assignment of one (1) additional point - Angina at exertion. 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 continues to be eligible for 5 hours per day or 155 hours of homemaker hours per month.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 30th Day of May 2006.

**Thomas E. Arnett
State Hearing Officer**