State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Joe Manchin III
Governor

Office of Inspector General
Board of Review
235 Barrett Street
Grafton WV 26354

Martha Yeager Walker
Secretary

January 13, 2005

_____
_____
_____

Dear Mr._____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 16, 2005. Your hearing request was based on the Department of Health and Human Resources' determination concerning Level of Care (monthly hours of care services) under the Medicaid Title XIX (Home & Community-Based) Waiver 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.

One of these regulations specifies that for the Aged/Disabled Waiver Program, hours of service are determined based on an evaluation of the Pre-Admission Screening Form (PAS). A Level of Care is determined by a point system. Points are derived from medical conditions and deficits set forth in the PAS. Program services are limited to a maximum number of units/hours that are determined by the PAS which is completed, reviewed and approved by WVMI. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual § 570.1-570.1. d)

The information submitted at the hearing revealed that as a result of your most recent medical evaluation (PAS), the agency determined your point total as 16 or a B Level of Care (93 hours maximum per month). Evidence offered established 5 additional points, resulting in a total of 21 points.

It is the decision of the State Hearing Officer to **reverse** the determination of the Agency as set forth in the September 15, 2005 notification. Evidence reveals that you continue to qualify for a **C** Level of Care.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Libby Boggess, RN, Bureau of Senior Services (BoSS)
[redacted], West Virginia Medical Institute (WVMI)

[redacted], CM, Health Consultants Plus

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

_____,
Claimant,

Action Number 05-BOR- 6708

v.

West Virginia Department of Health and Human Resources,
Respondent.

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Examiner resulting from a fair hearing concluded on January 12, 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 November 16, 2005 on a timely appeal received by the Bureau of Senior Services September 30, 2005 and by the Board of Review October 21, 2005.

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
[redacted], homemaker
[redacted] CM, Health Care Consultants Plus
Brian Holstine, LSW, BoSS (by phone)
[redacted] RN, WVMI (by phone)

Presiding at the hearing was Ron Anglin, State Hearing Examiner and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the agency was correct in their determination concerning Level of Care (hours of care) under the Medicaid Title XIX Waiver (HCB) Program?

V. APPLICABLE POLICY:

Aged/Disabled and Community-Based Services Waiver Policy Manual § 570.1- 570.1, d.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

E-1 A/D Waiver Manual § 570.1, c and 520.2- 3 and 580- 580.3
E-2 Medicaid Program Instruction MA-04-61, 11/1/04
E-3 WVMI Independent Review (PAS) completed 8/30/05
E-4 Notification, 9/15/05

VII. FINDINGS OF FACT:

1) The claimant is an active recipient of Aged/Disabled Home and Community-Based Waiver Services. As a result of an annual evaluation (E-3) completed by WVMI on August 30, 2005, WVMI determined the claimant's Level of Care to be B or 93 hours monthly- a reduction from level C. The agency provided notification to the claimant of the reduction in hours September 15, 2005 (E-4). The claimant requested a hearing in a request dated September 19, 2005. This hearing was convened November 16, 2005. It is noted that services under the Medicaid Title XIX Waiver (HCB) Program have continued at the previous level.

2) Exhibits as noted in Section VI above were presented.

3) Testimony was heard from the individuals listed in Section III above. All persons giving testimony were placed under oath.

4) Based on the medical evaluation of August 30, 2005 and testimony of the WVMI nurse, the Agency acknowledged a total of 16 points in determining a "Level of Care".

5) The agency awarded 6 points in Section 23 of the evaluation: Dyspnea, Significant Arthritis, Pain, Diabetes, Mental Disorder and Other (left BKA). Additional conditions/symptoms considered in this section are Angina Rest, Angina Exertion, Paralysis, Dysphagia, Aphasia, and Contractures.

6) In Section 26 of the evaluation no points were awarded by the agency for *continence* or *vision*.

7) Testimony provided on behalf of the claimant reveals that the claimant suffers angina at rest and exertion and utilizes a nitroglycerin patch at night and on occasions during the day. He has no vision in his right eye and little in his left. The medical assessment notes he watches TV and could see the RN and also noted unresolved glaucoma and cataracts. He also has bladder incontinence daily.

8) Aged/Disabled Home and Community-Based Waiver Manual 570.1 and 570.1.d:
There will be 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 I - 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)
* In the category of incontinence, the standard to establish occasional from total incontinence is determined by frequency- less that 3 times per week being occasional and more than 3 being total.
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 Level B or C
#34 - 1 point if Alzheimer's or other dementia
#35 - 1 point if terminal
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 requires a specific number and degree of functional deficits for the assignment of points to arrive at the Level of Care. The claimant was awarded a total of 16 points by the agency based on the evaluation of August 30, 2005, which resulted in a B "Level of Care".

2) Directives provide that in Section 23 of the medical evaluation, points (one for each condition) are awarded for each item under "Medical Conditions/Symptoms". The agency awarded 6 points in this section: Dyspnea, Significant Arthritis, Pain, Mental Disorder and Other. Evidence reveals the claimant suffers angina both at rest and exertion creating 2 additional points. He utilizes a nitroglycerin patch to address the symptoms.

3) Policy provides that points are awarded in Section 26 of the medical evaluation for *continence* or *vision*, if continence is occasional – more than 3 times per week (1 point) and vision if such can be characterized as impaired- not correctable. Evidence reveals that the claimant is incontinent on a daily basis. His vision is impaired and obviously not correctable. He is blind in one eye and has little use of the other, suffering glaucoma and cataracts. The statement from the assessment that he watches TV and could see the RN fails to establish corrected vision. The inclusion of these deficiencies creates 3 additional points- 1 for continence and 2 for vision.

4) Policy requires a minimum total of 18 points to qualify for a care level of C. The agency acknowledged a total of 16 points and evidence offered during the hearing provided 5 additional points. A total of 21 points results in a C level of care (a maximum of 124 hours per month).

IX. DECISION:

The Agency's determination as set forth in the September 15, 2005 notification is **reversed.** The claimant continues to qualify for a C Level of Care.

The agency's evaluation found a total of 16 points when determining the claimant's level of care determination (LOC). Evidence provided during the hearing was able to establish 5 additional points resulting in a total of 21. This results in the claimant qualifying for a **C** level of Care.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

Entered this 13th Day of January, 2006

RON ANGLIN
State Hearing Examiner