



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

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

August 15, 2007

\_\_\_\_\_ for  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 14, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker service hours under the Aged/Disabled (HCB) Title XIX Waiver Services 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.

Eligibility for the Aged/Disabled Waiver Program is based on current policy and regulations. One of these regulations specifies that for the Aged/Disabled Waiver Program, the number of homemaker service hours is determined based on the Level of Care (LOC). The Level 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 503.2)

Information submitted at the hearing reveals that that your Level of Care should remain at a Level AD.@ As a result, you continue to be eligible to receive 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 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

Pc: Erika H. Young, Chairman, Board of Review  
BoSS  
WVMI  
CCIL

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 07-BOR-1139**

**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 August 15, 2007 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 14, 2007 on a timely appeal filed April 16, 2007.

It should be noted that the Claimant's benefits have continued at the pre-hearing level pending a hearing decision.

**II. PROGRAM PURPOSE:**

The program entitled Aged/Disabled Waiver 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  
\_\_\_\_\_, Foster Mother/POA/Representative  
\_\_\_\_\_, Homemaker, Helping Hands  
\_\_\_\_\_, RN, Helping Hands  
Kay Ikerd, RN, BoSS  
\_\_\_\_\_, RN, WVMI

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 Department was correct in its proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled Waiver (HCB) Program.

### V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 503.2, 503.2.1 and 503.2.2

### VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

#### Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 503.2, 503.2.1, 503.2.2
- D-2 Pre-Admission Screening (PAS) assessment completed on April 3, 2007
- D-3 Notice of Decision dated April 6, 2007
- D-4 List of medical conditions completed by Dr. \_\_\_\_\_ (received by WVMI on April 4, 2007)

#### Claimant's Exhibits:

- C-1 Request for reevaluation completed by Dr. \_\_\_\_\_ on 2/15/07

### VII. FINDINGS OF FACT:

- 1) On April 3, 2007, the Claimant was medically assessed (Exhibit D-2) to determine continued medical eligibility for participation in the Aged/Disabled Waiver Services Program (ADW) and to assign an appropriate Level of Care, hereinafter LOC. It should be noted that the Claimant was receiving homemaker services at a level AD@ LOC (5 hours per day / 155 hours per month) at the time of the reevaluation.

- 2) On or about April 6, 2007, the Claimant was notified via a Notice of Decision (D-3) that she continues to be medically eligible to participate in the ADW Program, however, the amount of homemaker service hours were reduced to a LOC "C" (4 hours per day / 124 hours per month.)
- 3) The WVMi RN reviewed the Pre-Admission Screening (PAS) form (Exhibit D-2) and testified that the Claimant was awarded 21 points for documented medical conditions that require nursing services. In accordance with existing ADW Policy, this determination is consistent with a LOC "C," making the Claimant eligible for four (4) hours per day /124 hours per month of homemaker services.
- 4) The Claimant's representative purported that the Claimant's functional deficiencies are compounded by the fact that she suffers from Downs Syndrome, Mental Retardation and she is blind. The Claimant's representatives contend that the Claimant should have been awarded additionally points in the following areas: #23(j) *Contractures*, #26(b) *Bathing* – should be level 3, (c) *Grooming* – should be level 3, (e) *Bladder incontinence* – should be level 3, (f) *Bowel incontinence* – should be level 2, (j) *Wheeling* – should be level 3, (m) *Communication*-level 4, and #34 – related condition.
- 5) The Claimant's representatives cited a medical assessment (PAS) completed in 2006 that indicates the Claimant was given a point for *contractures*. The Department objected to the 2006 PAS being admitted into evidence and noted that the WVMi RN does not have access to that information and a diagnosis of contractures was not included in the physician's request for reevaluation (Exhibit D-4). While it was argued that contractures do not get better, the WVMi RN documented that the Claimant moved her knees during the assessment and that the joint did not appear frozen. In the absence of current medical documentation to confirm a diagnosis of contractures, a point cannot be awarded in this area.
- 6) Testimony received on behalf of the Claimant indicates that while a wash cloth can be placed in the Claimant's hand in an attempt to have her participate in bathing, the Claimant will wash the same spot until her skin becomes irritated or she is directed to wash another area. Page 6 of 7 of Exhibit D-2 notes – "Member was observed trying to wash her face, but did not put the cloth in the correct place." Although the Department contends that this is participation in bathing and therefore she only requires physical assistance (level 2), the Claimant's homemaker must completely wash the Claimant. The Claimant's mental and physical limitations clearly warrant a finding of total care (level 3) in bathing and an additional point (+1) is therefore awarded.
- 7) The evidence reveals that the only area of grooming the Claimant participates in is oral hygiene. This consists of receiving mouthwash for an oral rinse. Because the Claimant often swallows the mouthwash, a small amount must be placed in a cup and lifted to her mouth. It was noted that the Claimant's mouth and gums must still be brushed for her. The Department's loose interpretation of participation does not justify a level 2 rating in grooming. Based on the evidence, the Claimant is total care for grooming (level 3) and is therefore awarded an additional point (+1).

- 8) The WVM RN assessed incontinence of bladder (26e) and bowel (26f) on Exhibit D-2 at a level 1. However, this finding is inconsistent with the documentation found on Page 6 of 7 wherein the following statement can be found – “\_\_\_\_\_ states member wears Depends, mostly at night. She is continent most of the time of urine and stool. She has rare accidents.” This information alone would qualify the Claimant at a level 2 in both areas, however, the Claimant’s foster mother testified that she did not use the term “rare” when discussing the Claimant’s incontinence and that the number of incontinent episodes per week was not discussed. Further, she purported that the Claimant has 3 to 4 episodes of bladder incontinence per week and an average of 2 episodes of bowel incontinence per week. Based on the evidence, incontinence of bladder meets the criteria for a level 3 rating (+2) and incontinence of bowel clearly meets the level 2 (occasional incontinence) criteria (+1).
- 9) The Department’s findings regarding wheeling found in section 26j of Exhibit D-2 are correct. Although there was testimony to indicate that efforts are being made to secure a pediatric wheelchair for use in the home, the Claimant was not using a wheelchair in the home at the time of the assessment. No additional points can be awarded in this area.
- 10) The Claimant’s assessed level of communication (26m) was challenged, however, this area has been scored appropriately. The Claimant’s ability to communicate is clearly impaired, however, she does not require an aid to understand her (level-3) and she able to communicate her wants, needs and dislikes appropriately (level-4). Based on the evidence, no additional points can be awarded in the area of communication.
- 11) The Department argued that while the Claimant was not given a point under section #34 (Related Conditions), the Claimant was awarded a point for being terminal (#35) and this offsets not receiving a point for a having a related condition. The Department speculated that the physician may have incorrectly marked terminal on Exhibit C-1 when he meant to mark “Related Conditions.”

The WVM RN contacted the Claimant’s physician’s office to confirm a terminal diagnosis of stomach/colon cancer but the individual with whom she spoke was unable to confirm. The fact of the matter is that Dr. ██████ marked “yes” indicating the Claimant is terminal on Exhibit C-1 and noted that the Claimant has Downs Syndrome - Mental Retardation. Without a retraction statement from Dr. ██████ indicating the information included in Exhibit C-1 is incorrect, the terminal diagnosis will remain unchanged and a point will be added (+1) as the Claimant has a “Related Condition.”

- 12) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2.1 and 503.2.2: There will be four levels of care for clients of ADW homemaker services. Points will be determined based on the following sections of the PAS:

- #23 - Medical Conditions/Symptoms- 1 point for each (can have total of 12 points) (must be based on medical evidence presented by appropriate medical professionals)
- #24 - Decubitus- 1 point

- #25 - 1 point for b., c., or d.
- #26 - Functional abilities
  - Level 1- 0 points
  - Level 2- 1 point for each item a. through i.
  - Level 3- 2 points for each item a. through m.; i. (walking) must be equal to or greater than Level 3 before points are given for j. (wheeling)
  - Level 4 - 1 point for a., 1 point for e., 1 point for f., 2 points for g. through m.
- #27 - Professional and Technical Care Needs- 1 point for continuous oxygen
- #28 - Medication Administration- 1 point for b. or c.
- #34 - Dementia- 1 point if Alzheimer's or other dementia
- #35 - Prognosis- 1 point if terminal

The 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 provides that an individual's Level of Care (LOC) for the Aged/Disabled Waiver Program is determined by the number of points awarded on the PAS assessment tool.
- 2) The Claimant received 21 points on a PAS completed by WVMI in April 3, 2007 during her annual reevaluation.
- 3) As a result of the evidence presented at the hearing, five (5) additional points are awarded to the Claimant's LOC determination for a total of 26 points.
- 4) In accordance with existing policy, an individual with 26 points qualifies as a level "D" LOC and is therefore eligible to receive 5 hours per day or 155 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 15<sup>th</sup> Day of August, 2007.**

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**Thomas E. Arnett  
State Hearing Officer**