



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 28, 2007

Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 16, 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 WVM. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual 503.2)

Information submitted at the hearing reveals that while you continue to be medically eligible to participate in the Aged and Disabled Waiver Program, your Level of Care should be reduced from a level "D" Level a level "C" Level of Care. As a result, you are eligible to receive 4 hours per day / 124 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

Pc: Erika H. Young, Chairman, Board of Review  
BoSS  
WVM  
[REDACTED]

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

█  
**Claimant,**

v.

**Action Number: 07-BOR-1522**

**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 28, 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 16, 2007 on a timely appeal filed June 4, 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's daughter/representative  
██████████, RN, ██████████  
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 May 21, 2007
- D-3 Notice of Decision dated May 24, 2007

**Claimant's Exhibits:**

- C-1 Correspondence from ██████████, M.D., dated June 7, 2007

**VII. FINDINGS OF FACT:**

- 1) On May 21, 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 May 24, 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 24 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 representatives contend that the Claimant should remain a LOC "D" as she should have received additional points in the following areas: #24-Decubitus, #26.b-Bathing (level 3), #26.c-Dressing (level 3), #26.d-Grooming (level 3), #26.g –Orientation (level 2), and #28 Medication Administration (level "c," cannot administer).
- 5) RN [REDACTED] testified that the Claimant has a stage two (2) decubitus under her breast in her apron folds that she discovered on June 12, 2007. She indicated that the Claimant is currently receiving skilled services to treat this condition. The WVMi RN testified that the Claimant did not have a decubitus when the assessment was done. It should also be noted that the WVMi RN documented on page 7 of 8 on Exhibit D-2 - "Per those present denied decubitus." Because there was no decubitus reported at the time of the assessment, and there is no evidence to suggest that this condition was identified prior to June 12, 2007, no additional points can be awarded.
- 6) According to RN [REDACTED] the Claimant is not always orientated to date and time and she forgets if she has taken her medications. RN [REDACTED] contends that the Claimant should have been rated intermittent disorientation (level 2). The WVMi RN documented on Exhibit D-2, page 7 of 8, that the Claimant was "alert and oriented X3" on the day of the assessment and noted on page 8 of 8 - "Per those present denied DX of Alzheimer or dementia, no physician Dx or Rx medications."

There was no disorientation reported to the WVMi RN during the assessment, the Claimant was oriented X3 on the day of the assessment and there is no documentation or diagnosis from the Claimant's physician to indicate an orientation problem. Based on the evidence, the WVMi RN has appropriately rated the Claimant a level-1 and no additional points can be awarded in the area of orientation.

- 7) The WVMi RN testified that the Claimant was awarded a point in medication administration as she was assessed at level "b," (prompting and supervision). While there was testimony received to indicate that the Claimant is unable to apply a nitroglycerin patch and that family members must put her meds in or hands or in her mouth, an individual can only receive one point in medication administration for levels "b" (prompting and supervision) or "c" (unable to administer her own medications). According to the evidence, the Claimant received a point in this area when she was assessed a level "b" and cannot receive any additional points for a LOC determination.

- 8) The WVMi RN testified that the Claimant has the functional ability to participate in bathing and documented on page 8 of 8, Exhibit D-2, "Per those present is able to wash her face and chest area." Because the Claimant can effectively participate in bathing and washes the areas noted on Exhibit D-2, the WVMi RN's assessment of bathing is accurate. The Claimant was appropriately rated a level 2 and requires physical assistance with bathing. No additional points can be awarded in the area of bathing.
- 9) The WVMi RN assessed the Claimant's functional ability to groom at a level 2 (physical assistance) and not total care (level 3) because the Claimant reported she takes care of her own mouth care and can comb her hair. All other areas of grooming (nail clipping & hair washing) were reported to be total care. Testimony received on behalf of the Claimant indicates that while the Claimant can lift a comb to her hair, she is unable to effectively comb her hair due to grasp problems in her hands and discomfort from raising her arms. However, the Claimant is able to do her own mouth care as noted in Exhibit D-2. Because the Claimant is participating in her grooming needs, albeit minimal, the Claimant has been appropriately assessed a level 2 (physical assistance) in grooming.
- 10) Evidence received in support of the Claimant being determine a level-3 (total care) in dressing reveals that the Claimant suffers a great deal of discomfort and shortness of breath when raising her arms. According to RN [REDACTED] the Claimant is capable of directing her hand toward the sleeve of a shirt but her hand must be pulled through. Dr. [REDACTED] indicated in Exhibit C-1 that the Claimant has a diagnosis of severe disc disease with radiculopathy and states - "This patient needs someone to dress her because she become short of breath when lifting her arms. Although the WVMi RN witnessed the Claimant raise her arms over her head, I am unconvinced that the Claimant's minimal participation in directing her hand toward a shirt sleeve constitutes reason to believe she is anything less than total care in dressing. Based on the evidence, an additional point (+1) is awarded in dressing (level 3, total care).
- 11) 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 24 points on a PAS completed by WVMi on May 21, 2007 during her annual reevaluation.
- 3) As a result of the evidence presented at the hearing, one (1) additional point was awarded to the Claimant's LOC determination for a total of 25 points.
- 4) In accordance with existing policy, an individual with 25 points qualifies as a level "C" LOC and is therefore eligible to receive 4 hours per day or 124 hours per month of homemaker services.

#### **IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** 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 28<sup>th</sup> Day of August, 2007.**

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**Thomas E. Arnett  
State Hearing Officer**