



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

March 7, 2007

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 6, 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 AC.@ As a result, you continue to be eligible to receive four (4) hours per day / 124 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

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

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

_____,
Claimant,

v.

Action Number: 07-BOR-582

**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 7, 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 March 6, 2007 on a timely appeal filed January 10, 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:

██████████, RN, CCIL
Libby Boggess, 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(s) 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 December 12, 2006
- D-3 Notice of Decision dated January 3, 2007
- D-4 Medical Necessity Evaluation Request dated 11/17/06

Claimant's Exhibits:

- C-1 Diagnoses for _____ (from his physician) dated 2/23/07

VII. FINDINGS OF FACT:

- 1) On December 12, 2006, the Claimant was medically assessed (Exhibit D-2) to determine continued medical eligibility and assign an appropriate Level of Care, hereinafter LOC, for participation in the Aged/Disabled Waiver Services Program (ADW). It should be noted that the Claimant was receiving Homemaker Services at a level AC@ LOC at the time of the reevaluation.
- 2) On or about January 3, 2007, the Claimant was notified via a Notice of Decision (D-3) that he continues to be medically eligible for participation in the ADW Program, however, the amount of homemaker service hours were reduced to 93 (Level "B" LOC).

- 3) The WVMi RN reviewed the Pre-Admission Screening (PAS) form (Exhibit D-2) and testified that the Claimant was awarded 16 points for documented medical conditions that require nursing services. She testified that this finding is consistent with a LOC "B," making the Claimant eligible for 3 hours per day or 93 hours per month of homemaker services.
- 4) As a matter of record, the Department conceded that the Claimant should have been awarded an additional point for significant arthritis (item #23.d). The WVMi RN was unable to get verification from the Claimant's physician at the time of the assessment, however, the Department indicated they were agreeable to the physician's diagnosis of significant arthritis found in Claimant's Exhibit C-1. One (+1) additional point is therefore awarded to the Claimant's LOC determination.
- 5) The Claimant's representative purported that the Claimant should have been awarded a point for bowel incontinence (item #26.f). RN [REDACTED] testified that the Claimant was experiencing episodes of bowel incontinence when the assessment was completed and that the homemakers often reported having to clean up bowel movements. The Claimant was the only person present during the medical assessment and RN [REDACTED] was unsure why this information was not provided to the WVMi RN.

Page 6 of 6 on Exhibit D-2 states under Bowel – "He stated only time he has incontinence of bowel is when he has diarrhea and that does not occur weekly but about 1 time per month." However, evidence found on Page 2 of 6 reveals that the Claimant was hospitalized one week prior to the assessment for a period of 6 days due to diarrhea and that he had chronic diarrhea for 8 months that resulted in an infected decubitus and required him to stay at a nursing home for 6 months. The Claimant's statement on page 6 is clearly inconsistent with his medical history found on page 2, and while the Department objected to the diagnosis "Incontinent of bowel" found on Claimant's Exhibit C-1 due to timeliness, RN [REDACTED] is a qualified medical professional who medically assesses the Claimant and routinely supervises the homemakers who assist the Claimant with functional deficiencies. Based on the evidence, the Claimant suffered from bowel incontinence at the time of the assessment and one (+1) additional point is therefore awarded to the Claimant's LOC determination.

- 6) 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
- #34 - 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 16 points on a PAS completed by WVMI in December 2006 during his annual reevaluation.
- 3) As a result of the evidence presented at the hearing, two (2) additional points are awarded to the Claimant's LOC determination for a total of 18 points.
- 4) In accordance with existing policy, an individual with 18 points qualifies as a level "C" LOC and 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 **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 7th Day of March, 2007.

**Thomas E. Arnett
State Hearing Officer**