



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

May 9, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 8, 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 while you continue to require the degree of care and services necessary to qualify medically for the Aged & Disabled Waiver Program, your documented medical conditions confirm that your Level of Care should be reduced from a Level AC@ to a Level AB@ Level of Care rating. As a result, you are eligible to receive three (3) hours per day /93 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

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

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

_____,
Claimant,

v.

Action Number: 07-BOR-905

**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 9, 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 May 8, 2007 on a timely appeal filed March 6, 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:

[REDACTED], Claimant's daughter / representative
[REDACTED] CM, CCS
[REDACTED] RN, CCS
Libby Boggess, RN, BoSS
[REDACTED] 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 February 22, 2007
- D-3 Notice of Decision dated February 27, 2007
- D-4 Medical Necessity Evaluation Request dated 1/17/07

VII. FINDINGS OF FACT:

- 1) On February 22, 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 assign an appropriate Level of Care, hereinafter LOC. It should be noted that the Claimant was receiving Homemaker Services at a level AC@ LOC (4 hours per day / 124 hours per month) at the time of the reevaluation.
- 2) On or about February 27, 2007, the Claimant was notified via a Notice of Decision (D-3) that she continues to be medically eligible for participation in the ADW Program, however, the amount of homemaker service hours were reduced to 3 hours per day / 93 per month (Level "B" LOC).

- 3) The WVMi RN reviewed the Pre-Admission Screening (PAS) form (Exhibit D-2) and testified that the Claimant was awarded 13 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) The Claimant's representatives contend that the Claimant should remain a LOC "C" as the assessment should reflect the following ratings which would qualify her for 5 additional points and the 18-point cumulative total required to remain a level "C."

Section #23(d)

One additional point for significant arthritis

Section #26

One additional point in dressing (should have been level 3, total care).

One additional point in transferring (should be Level 3, one person assist).

Two additional points for bowel incontinence (level 3, incontinent).

- 5) The Claimant's representatives purported that the Claimant has been incontinent of bowel for a long time and the PAS completed last year reflected this finding. Testimony from the WVMi RN, however, reveals that the Claimant and all present during the medical assessment agreed that the Claimant did not have bowel incontinence. While the Claimant's representative testified that she does not recall the question being asked, this claim is inconsistent with the thorough documentation regarding bladder incontinence and credible testimony provided by RN [REDACTED]. Moreover, the Claimant's representatives failed to present any medical documentation to support their claim. Based on the evidence, no additional points can be awarded in the area of bowel incontinence.
- 6) Because the Claimant required a favorable finding in all of the areas contested to remain a LOC "C," and no additional points can be awarded for bowel incontinence, it is therefore moot to review the other contested areas of the PAS.
- 7) 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 13 points on the PAS completed by WVMI in February 2007 during her annual reevaluation.
- 3) The evidence submitted at the hearing reveals that the Claimant does not have sufficient medical evidence to be awarded the five (5) additional points required to accumulate 18 points and remain at level "C" LOC.
- 4) In accordance with existing policy, an individual with 10-17 points qualifies as a level "B" LOC and is therefore eligible to receive 3 hours per day or 93 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 9th Day of May, 2007.

Thomas E. Arnett
State Hearing Officer