



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

January 13, 2009

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 8, 2009. 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, Chapter 500, §§501.3.2.1 & 501.3.2.2)

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 "C" Level a level "B" Level of Care. As a result, you are eligible to receive 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 Services Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

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

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

_____,

Claimant,

v.

Action Number: 08-BOR-2015

**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 January 13, 2009 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 originally scheduled to convene on October 21, 2008 and December 23, 2008 but was rescheduled and convened on January 8, 2009 on a timely appeal filed August 26, 2008.

It should be noted that the Claimant's benefits have continued at a Level "C" level of care 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
_____, Homemaker
_____, Homemaker RN, Precision Care
_____, CM, CCWV
Kay Ikerd, RN, BoSS (Participated telephonically)
Debra LeMasters, RN, WVMi (Participated telephonically)

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 or not the Department was correct in its proposal to reduce the Claimant homemaker services hours (LOC) provided through the Medicaid Aged and Disabled Waiver Program.

V. APPLICABLE POLICY:

Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, Section 501.3.2.1 & 501.3.2.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services - Section 501.3.2.1 & 501.3.2.2
- D-2 Pre-Admission Screening for Aged/Disabled Waiver Services (PAS) dated 7/23/08
- D-3 Correspondence (response/confirmation) from Dr. [REDACTED] (Received 7/24/08)
- D-4 Notice of Decision dated July 28, 2008

VII. FINDINGS OF FACT:

- 1) On July 23, 2008, the Claimant was medically assessed (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 "C" LOC at the time of the reevaluation.

- 2) On or about July 28, 2008, the Claimant was notified via a Notice of Decision (D-4) that she continues to be medically eligible for participation in the ADW Program, however, the amount of homemaker service hours were reduced to 93 hours per month (Level “B” LOC).
- 3) The Department reviewed Medicaid policy and called its witness to review the medical findings on the Pre-Admission Screening (PAS) Form. The WVM RN reviewed the PAS form (D-2) and testified that the Claimant was awarded 17 points for documented medical conditions that require nursing services. She testified that this finding is consistent with a LOC “B” (10-17 points) making the Claimant eligible for 3 hours per day or 93 hours per month of homemaker services.
- 4) The Claimant’s representative contends that the Claimant should remain a LOC “C” as she should have been awarded two (2) additional points – One point for intermittent disorientation and one point for Diabetes. Pursuant to Medicaid policy, one (1) additional point must be identified in order for the Claimant to qualify at a Level “C” LOC.
- 5) With regard to the contested area of Diabetes, the WVM RN contacted the Claimant’s physician to confirm a diagnosis of Diabetes per the report of _____. The Claimant’s physician (Dr. [REDACTED]) responded by indicating “NO” next to Diabetes (see Exhibit D-3). While there were discussions regarding the Claimant having been reported to be “Borderline Hyperglycemia previously,” the Claimant does not have Diabetes, and therefore, does not qualify for a point in this area.
- 6) In order to qualify for points in disorientation (or intermittent disorientation), the individual must be disoriented to time and place (disorientated X 2). The Claimant’s homemaker testified that the Claimant sometimes gets confused to day and time and what medication she is supposed to take. The homemaker stated that she must often remind the Claimant of doctor’s appointments. The homemaker also testified that the Claimant has called her on the weekend (her day off) to ask her why she was not working.

The PAS (D-2) indicates that the Claimant was “alert and oriented X 3” on the date of the assessment and there is no documentation to indicate this finding was previously challenged. The WVM RN purported that people forget what day it is and sometimes forget to take their medicine but impaired short-term memory is not the same as disorientation. An individual is considered disorientation to time when the person might mix their days and nights or dress inappropriately for the seasons. The Claimant always knows who she is, where she lives and does not appear to be disoriented to place or time.

The Claimant acknowledged that she got her medicines confused on one occasion but that her daughter sets her medication up and she takes it like she is supposed to, even on the days when her aid is not in the home. She indicated that she does not remember contacting her homemaker on her day off.

The difficulty in awarding a point weighs heavily on the fact that this issue was neither contested nor addressed directly following the assessment. Moreover, there is no documentation specific to incidents (except one occasion with medication) and the Claimant, as well as the assessing RN, appear assured that the issue was simply related to short term memory as opposed to disorientation. Based on the evidence, no additional points can be

awarded in the area of orientation.

- 7) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2.1 and 501.3.2.2: 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)
- #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 17 points on a PAS completed by WVMi in July 2008.
- 3) As a result of the evidence presented at the hearing, no additional points can be awarded to the Claimant's LOC determination.
- 4) In accordance with existing policy, an individual with 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 13th Day of January, 2009.

**Thomas E. Arnett
State Hearing Officer**