



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

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

June 30, 2005

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 19, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker service hours under the Medicaid Title XIX (Home & Community-Based) Waiver Program.

In arriving at a decision, the State Hearings 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.

One of these regulations specifies that for the Aged and Disabled Waiver Program, the number of Homemaker services hours is determined based on your Level of Care (LOC). The "Level of Care" is determined by an evaluation completed on 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 520 & 570.1).

The information which was submitted at your hearing revealed 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 "D" to a Level "C" Level of Care rating. As a result, you are 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 **uphold** the proposal of the Agency 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
WVMI
[REDACTED] CM, CCS

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

_____ **Claimant,**

v.

Action Number: 05-BOR-4417

**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 June 30, 2005 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 April 19, 2005 on a timely appeal, filed October 4, 2004.

It should be noted here that the claimant's benefits and services under the Medicaid Title XIX Waiver (HCB Program) have been continued pending a hearing decision.

II. PROGRAM PURPOSE:

The Program entitled Medicaid Title XIX Waiver (HCB) 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: _____

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 agency is correct in their proposal to reduce the Claimant's homemaker services hours under the Medicaid Title XIX Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled and Community-Based Services Waiver Policy manual 570 & 580

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Waiver Policy Manual 570 & 580.
- D-2 Notice of Decision dated August 12, 2004.
- D-3 Pre-Admission Screening form, PAS-2000 dated August 10, 2004.

Claimants' Exhibits:

- C-1 Correspondence from [REDACTED] MD, Wheeling Hospital, dated 3/29/05.
- C-2 Correspondence from [REDACTED] MD, MACP, Wheeling Renal Care

VII. FINDINGS OF FACT:

- 1) The Claimant's Aged & Disabled Waiver case was undergoing an annual medical reevaluation to verify continued medical eligibility and to determine the appropriate Level of Care, Hereinafter LOC.
- 2) The Claimant was receiving homemaker services at a level "D" LOC (155 hours per month) at the time of the evaluation.
- 3) On August 12, 2004, a Notice of Decision (D-2) was sent to the Claimant. This notice states, in pertinent part:

The West Virginia Medical Institute (WVMI) is the Quality Improvement Organization (QIO) authorized by the Bureau of Medical Services of the West Virginia Department of Health and Human Resources to determine medical necessity for the Aged and Disabled Waiver Program. You have been

determined medically eligible to continue to receive in-home services under the Aged and Disabled Waiver Program. The number of homemaker services hours approved is based on your medical needs and cannot exceed 124 hours.

- 4) Debbie LeMasters reviewed the PAS-2000 (D-3) and testified that the Claimant was awarded 22 points for documented medical conditions that require nursing services. She testified that the findings are consistent with a level of care (LOC) "C," indicating that the Claimant is eligible for 3-hours per day or 93 hours per month of homemaker services.
- 5) Ms. LeMasters noted that a point had been erroneously awarded under number 34 but stated that the Agency would not remove a point once awarded.
- 6) Testimony and documentation submitted on behalf of the Claimant failed to reveal the existence of any medical conditions that would warrant the assignment of additional points.
- 7) The Aged/Disabled Home and Community Based Services Manual 580.2 & 580.2,b – provides that a medical eligibility reevaluation may include either a periodic or annual reevaluation. The purpose of the reevaluation is to confirm and validate an individual's continued medical eligibility for ADW services and to establish whether there is any change in the LOC the individual requires. All clients must be evaluated at least annually.
- 8) Aged/Disabled Home and Community Based Services Manual § 570.1.c & d. - Level of Care Criteria:

There are four levels of care for clients of ADW Homemaker services. Points will be determined as follows, based on the following sections of the PAS:

- #23 1 point for each (can have total of 12 points)
- #24 1 point
- #25 1 point for B, C, or D
- #26 Level 1 - 0 points
Level II - 1 point for each item A through I
Level III - 2 points for each item A through M; I (walking) must be equal to or greater than
Level III before points given for J (wheeling)
Level IV - 1 point for A, 1 point for E, 1 point for F, 2 points for G through M

- #27 1 point for continuous oxygen
- #28 - 1 point for B or C
- #34 - 1 point if Alzheimer's or other dementia
- #35 - 1 point if terminal

Level A 5-9 points 62 Hours Per Month

Level B	10-17 points	93 Hours Per Month
Level C	18-25 points	124 Hours Per Month
Level D	26-44 points	155 Hours Per Month

VIII. CONCLUSIONS OF LAW:

- 1) Individuals who medically qualify for the Aged and Disabled Waiver Services Program are evaluated and assigned a Level of Care.
- 2) The Level of Care is determined by assigning points to qualifying documented medical findings on the PAS-2000.
- 3) The medical assessment (PAS-2000) completed by WVMH awarded 22 points to the Claimant's medical conditions and determined that she was a Level of Care "C," eligible for 4-hours per day or 124-hours per month of homemaker services per month.
- 4) The evidence submitted on behalf of the Claimant failed to identify any medical conditions that would warrant the assignment of additional points. Therefore, the Level of Care determination recommended by the Department is proper.

IX. DECISION:

After reviewing the information presented during the hearing, and the applicable policy and regulations, I am ruling to **uphold** the proposal of the Agency to reduce the Claimant's homemaker services hours to a level "C" LOC – 4 hours per day or 124-hours per month.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 30th Day of June 2005.

Thomas E. Arnett
State Hearing Officer