



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

February 8, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 4, 2006. 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 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.

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 "C" to a Level "B" 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 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
_____, RN, CM, First Care Services, Inc.

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

_____,

Claimant,

v.

Action Number: 05-BOR-5849

**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 February 8, 2006 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 January 4, 2006 on a timely appeal, filed May 27, 2005.

It should be noted here that the Claimant's benefits and services under the Medicaid Title XIX Waiver (HCB) Program have 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:

_____, Claimant

_____, Claimant's daughter

_____, RN, CM, First Care Services, Inc.

_____, Claimant's homemaker

_____, RN, Helping Hands

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 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 Pre-Admission Screening form, PAS-2000 dated May 10, 2005.

D-2 Aged/Disabled Home and Community-Based Services Waiver Policy Manual 570 & 580.

D-3 Notice of Decision dated May 17, 2005.

VII. FINDINGS OF FACT:

- 1) The Claimant's Aged & Disabled Waiver case was undergoing an annual medical reevaluation to verify continued medical eligibility and the appropriate Level of Care, hereinafter LOC.
- 2) The Claimant was receiving homemaker services at a level "C" LOC (4 hours per day / 124 hours per month) at the time of the evaluation.

- 3) The Claimant was notified via a Notice of Decision (D-3) dated May 17, 2005, the results of her reevaluation for eligibility and benefit levels. This letter 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 93 hours.

- 4) [REDACTED] reviewed the PAS-2000 (D-1) and testified that the Claimant was awarded 15 points for documented medical conditions that require nursing services. She testified that the findings are consistent with a level of care (LOC) "B," indicating that the Claimant is eligible for 3 hours per day or 93 hours per month of homemaker services.
- 5) The Claimant and her representatives contend that additional points should have been awarded in the following areas: angina at rest, aphasia, contractures, bathing (total care), grooming (total care) and orientation (intermittent disorientation).
- 6) Credible testimony provided by [REDACTED] RN, indicates that the Claimant suffers from angina at rest. An additional point (+1) is therefore awarded for section 23(a) - angina at rest.
- 7) The Department testified that a point is only awarded in aphasia if an individual's speech cannot be understood. Ms. [REDACTED] further explained that the medical definition of aphasia is the inability to speak. While the evidence reveals that the Claimant's speech is impaired, she does not meet the definition aphasia. A point cannot be awarded in this area.
- 8) The Claimant's toes are turning inward toward the big toe on both feet. [REDACTED] testified that she viewed the Claimant's feet and toes on the day of the assessment, and while she acknowledged that her toes are turning inward, they do not qualify as a contracture because the joints of the toes still move. The Claimant's condition is more of a deformity because a contracture makes the joint immobile. Based on this evidence, a point cannot be awarded for contractures.
- 9) There is insufficient evidence to award additional points in the area of bathing. The Claimant participates in bathing and has been appropriately identified as requiring physical assistance. The Claimant does not qualify as total care in bathing and therefore no additional points can be awarded in this area.

- 10) Testimony received in support of an additional point in grooming is inconsistent with the evidence. The evidence reveals that the Claimant can drink from a cup independently and that deep cups are typically only filled ½ full to avoid spills due to tremors. Clearly this modification can be successfully applied to the Claimant's ability to use mouthwash. Based on this evidence, the Claimant has been appropriately assessed as requiring physical assistance in grooming (not total care). An additional point cannot be awarded in the area of grooming.
- 11) The issue of orientation was questioned by the Claimant's representatives because she is on a medication (BENZTROPINE MESYLATE) that can cause memory loss and confusion. Credible testimony provided by _____ reveals that her mother often calls her confused at 12:00 a.m. and 1:00a.m. wondering why her homemaker is not yet there. Ms. _____ testified that her mother is often disoriented to time and this has been ongoing for the last 2 years. Based on this evidence, one additional point (+1) is awarded for intermittent disorientation.
- 12) 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.
- 13) 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	2 Hours Per Day / 62 Hours Per Month
Level B	10-17 points	3 Hours Per Day / 93 Hours Per Month
Level C	18-25 points	4 Hours Per Day / 124 Hours Per Month
Level D	26-44 points	5 Hours Per Day / 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 conditions on the PAS-2000.
- 3) The medical assessment (PAS-2000) completed by WVMI on May 10, 2005 assigned 15 points to the Claimant's medical conditions and determined that she was a Level of Care "B," eligible for 3 hours per day or 93 hours per month of homemaker services.
- 4) Evidence received at the hearing support the assignment of two (2) additional points as the Claimant suffers from angina at rest (+1) and she experiences intermittent disorientation (+1). This brings the Claimant's point total to 17.
- 5) Policy provides that individuals who have been awarded 17 points qualify as a Level "B" LOC and are therefore eligible to receive 3 hours per day / 93 hours per month of homemaker services. Based on the evidence, the Level of Care recommend by the Department is affirmed.

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 "B" LOC, and she is eligible for 3 hours per day / 93 hours per month of homemaker services.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 8th Day of February 2006.

Thomas E. Arnett
State Hearing Officer