



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

September 26, 2007

[REDACTED] for

Dear [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 25, 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 be medically eligible to participate in the Aged and Disabled Waiver Program, your Level of Care should be reduced from a level "D" Level a level "C" Level of Care. As a result, you are eligible to receive 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 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  
WVMi  
[REDACTED]

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

██████████  
**Claimant,**

**v.**

**Action Number: 07-BOR-1505**

**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 September 26, 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 originally scheduled to convene on August 28, 2007 but was continued at the request of the Department and convened on September 25, 2007 on a timely appeal filed June 1, 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:**

██████████ Claimant's Daughter / MPOA / Representative  
██████████, RN, ██████████  
██████████, Co-Owner, ██████████  
██████████, LSW, 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 April 19, 2007
- D-3 Notice of Decision dated May 16, 2007

#### **Claimant's Exhibits:**

- C-1 Correspondence from Dr. ██████████ dated April 20, 2007
- C-2 West Virginia Aged and Disabled Waiver Program PLAN OF CARE dated 1/4/07

### **VII. FINDINGS OF FACT:**

- 1) On April 19, 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 AD@ LOC (155 hours per month) at the time of the reevaluation.

- 2) On or about January 3, 2007, the Claimant was notified via a Notice of Decision (Exhibit D-3) that she continues to be medically eligible to participate in the ADW Program, however, the amount of homemaker service hours were reduced to 124 per month (Level "C" LOC).
- 3) The WVMi RN reviewed the Pre-Admission Screening (PAS) form (Exhibit D-2) and testified that the Claimant was awarded 23 points for documented medical conditions that require nursing services. The WVMi RN testified that this finding is consistent with a LOC "C," making the Claimant eligible for 4 hours per day or 124 hours per month of homemaker services.
- 4) The Claimant's representative contends that the Claimant should have received additional point(s) in the following areas: Bathing (level 3, total care), Dressing (level 3, total care), Grooming (level 3, total care), Orientation (level 3, totally disoriented) and Communication (level 3 – "understandable with aids" or level 4 – "inappropriate/none" was not specified).
- 5) The evidence reveals that the Claimant is bathed by way of a sponge bath. The WVMi RN testified that the Claimant was assessed at a level 2 (physical assistance) in bathing because the homemaker reported that the Claimant participates in bathing by washing her face (see documentation on page 6 of Exhibit D-2). When the issue was further clarified during the assessment, the Homemaker reported that she has to go back over the Claimant's face. Testimony received on behalf of the Claimant indicates that while the Claimant may attempt to participate in bathing by washing her face, the Homemaker must go over that area as the Claimant cannot effectively or appropriately wash her face. This finding is also supported by the documentation found in Exhibits C-1 and C-2. The evidence reveals that although the Claimant may desire to participate in the bathing process, her ability to effectively complete this task (washing her face) is ineffective. **The Claimant is therefore total care in bathing (level 3) and an additional point (+1) is awarded.**
- 6) The WVMi RN determined that the Claimant required only physical assistance in dressing because the Claimant untied her robe herself and she will assist with getting her arms in and out of the sleeves of her clothes. However, documentation found on page 6 of Exhibit D-2 indicates that the Claimant started to take off her robe but needed assistance with pulling off her arms. "Reports she needs assistance with getting gown on and off, daughter reports they have to put her pants on and take them off for her, daughter reports she needs assistance with getting socks and shoes on for her. HM or daughter does her buttons for her do to her hands."

The Claimant untied her robe but was unable to get her arms out of the sleeves. The Claimant's demonstrated ability is inconsistent with her alleged ability to assist with getting her arms in and out of sleeves (as demonstrated while attempting to disrobe). Documentation reveals that the Claimant is total care with her pants, socks, shoes and buttons. The only ability demonstrated by the Claimant in this documentation is the ability to untie her robe. Dr. [REDACTED] indicated in Exhibit C-1 that the Claimant is total care in dressing and the Plan of Care (Exhibit C-2) reveals that the Claimant is currently receiving total care services in dressing. **Based on the evidence, the Claimant is total care in dressing and an additional point (+1) is awarded.**

- 7) The Claimant's functional ability to complete tasks related to grooming is adversely affected by her mental capacity, as noted in Exhibit C-1, however, the determination must be made whether she needs total care or physical assistance. The Claimant's daughter/representative purported that the Claimant cannot do any nail care at this time but indicated this statement was accurate at the time of the assessment. Additionally, documentation found in Exhibit D-2 indicates the Claimant was able to brush and comb her hair and "member tries to put on toothpaste on toothbrush and then brushes her teeth and brushes her dentures..." This information was not contested by the Claimant's representatives and indicates that while the Claimant may need some assistance, she is still capable of participating in her grooming needs. The evidence reveals that the Claimant, at the time of the assessment, required prompting, supervision and some hands-on physical assistance in the area of grooming. The Department has correctly assessed the Claimant at a level 2 and no additional points can be awarded.
- 8) The Claimant received one (1) point in Orientation due to being assessed as intermittently disoriented by the WVMi RN. In order for an individual to receive two (2) points, an individual must be totally disoriented or comatose. Evidence presented by the Department indicates that the Claimant was oriented to person and place on the day of the assessment. Further evidence of the Claimant's orientation status is when the Claimant retrieved her fingernail file from a drawer without being directed to do so. While the Claimant's is clearly demonstrating episodes of disorientation, there is insufficient evidence to demonstrate that the Claimant is totally disoriented and no additional points can be awarded in this area.
- 9) The Claimant's representatives contend that the Claimant should have been awarded an additional two (2) points in the area of Communication because she often repeats herself and forgets conversations. An individual who would be eligible for LOC points in this area must need aids to communicate, respond inappropriately or not at all. The evidence reveals that the Claimant participated in the medical assessment on April 19, 2007 and demonstrated appropriate expressive and receptive language skills. The WVMi RN documented on page 7 of Exhibit D-2 – "Member communicated without any difficulty." According to the evidence, the Claimant was able to understand questions and responded appropriately. No additional points can be awarded in the area of Communication.
- 10) 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 23 points on a PAS completed by WVMi in April 2007 during her 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 25 points.
- 4) In accordance with existing policy, an individual with 25 points qualifies as a level "C" LOC and is 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 **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 26<sup>th</sup> Day of September, 2007.**

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**Thomas E. Arnett  
State Hearing Officer**