



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 West Washington Street
Charleston, WV 25313
304-746-2360**

Joe Manchin III			Martha Yeager Walker
Governor			Secretary

March 16, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 30, 2008. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker service hours under the Aged/Disabled Waiver Services 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.

Eligibility for the Aged/Disabled Waiver Services 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 your 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, 503.2.1 and 503.2.2)

The information which was submitted at your hearing revealed that

It is the decision of the State Hearings Officer to uphold the proposal of the Department to reduce your homemaker service hours under the Medicaid Waiver Program.

Sincerely,

Jennifer Butcher
State Hearings Officer
Member, State Board of Review

Cc: Erika H. Young, Chairman, Board of Review
WVMI
BoSS
CWVAS

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

-----,

Claimant,

v.

Action Number: 08-BOR-1853

**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 March 16, 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 convened on October 30, 2008 on a timely appeal, filed August 1, 2008.

It should be noted here that the claimant's benefits have been continued 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
-----, Claimant's Daughter
-----, Homemaker RN, Special Touch Homemaker Agency
Brian Holstein, Department Representative
-----, RN, West Virginia Medical Institute (WVMI)

Presiding at the Hearing was Jennifer Butcher, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled Waiver Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 501.2, 501.2.1 and 503.2.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 501.3.2.1 and 501.3.2.2
- D-2 Preadmission Screening form PAS-2000 dated July 24, 2008

VII. FINDINGS OF FACT:

- 1) On July 24, 2008, 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 for homemaker services. The assessment was completed by West Virginia Medical Institute (hereinafter WVMI) nurse ----- . In attendance for the reassessment was the Claimant, the claimant's daughter, -----, and Homemaker RN ----- . It should be noted that the Claimant was receiving homemaker services at a Level "D" LOC at the time of the reevaluation.
- 2) The Claimant was assigned 25 points by the evaluating WVMI Nurse for documented medical conditions that require nursing services. A LOC "C" (18-25 points) was assigned to claimant making her eligible for four (4) hours per day or 124 hours per month of homemaker services.

- 3) WVMi nurse ----- gave testimony as to the method used to calculate the level of care using point values according to Claimant's medical conditions and the amount of care needed for activities of daily living.
- 4) The Claimant's daughter testified that her mother was having a good day on the day of the assessment and asserted that that fact should have been taken into consideration in the assessment. There was no testimony given or evidence presented to dispute any particular point value.
- 5) 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
 - #35 - 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 25 points on a PAS completed by WVMi in July 2008 during her annual reevaluation. There was no evidence or testimony submitted to refute the point level assigned.

- 3) In accordance with existing policy, an individual with 25points qualifies as a level “B” LOC and 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 Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant’s Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of March 2009.

**Jennifer Butcher
State Hearing Officer**