



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 W. Washington St.
Charleston, WV 25313

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 27, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 22, 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 501)

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" to 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 Department's proposal to reduce your homemaker service hours under the Medicaid Title XIX (HCB) Waiver Program.

Sincerely,

Jennifer Butcher
State Hearing Officer
Member, State Board of Review

Pc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
ResCare Home Care

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

-----,

Claimant,

v.

Action Number: 08-BOR-2392

**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 27, 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 January 22, 2009 on a timely appeal filed October 21, 2008.

It should be noted that benefits and services have 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

██████████ CM, ResCare

-----, Caregiver, ResCare
Kay Ikerd, RN, BoSS
Paula Clark, RN, WVMI (Participated telephonically)

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 (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 501.3.2.1 and 501.3.2.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 501.3.2.1 and 501.3.2.2
- D-2 Pre-Admission Screening (PAS) assessment completed on October 13, 2008
- D-3 Notice of Decision - dated October 15, 2008
- D-4 Request for Hearing – filed on October 21, 2008

Claimant's Exhibits:

- C-1 List of Medications for ----- for period from February 16, 2007 to February 27, 2008
- C-2 Correspondence from [REDACTED] MD – dated January 13, 2009

VII. FINDINGS OF FACT:

- 1) On October 13, 2008, the Claimant was medically assessed (D-2) to determine continued medical eligibility for participation in the Aged/Disabled Waiver Services (ADW) Program and to assign an appropriate Level of Care, hereinafter LOC. It should be noted that the Claimant was receiving homemaker services at a level AC@ LOC (4 hours per day / 124 hours per month) at the time of the reevaluation.
- 2) On or about October 15, 2008, the Claimant was notified via a Notice of Decision (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 a LOC "B" (3 hours per day / 93 hours per month.)

- 3) The WVM RN reviewed the Pre-Admission Screening (PAS) form (D-2) and testified that the Claimant was awarded 16 points for documented medical conditions that require nursing services. In accordance with existing ADW Policy, this determination is consistent with a LOC “B,” making the Claimant eligible for 3 hours per day / 93 hours per month of homemaker services.
- 4) The Claimant’s representatives contend that the Claimant should remain a LOC “C” as she should have received an additional point in the following areas: #23.c. Dyspnea (related to COPD and Congestive Heart Failure (CHF)).
- 5) The Claimant’s diagnosis of CHF is confirmed in Exhibit C-2 (by history) as well as her current prescription of Lasix (used to treat CHF). Based on the evidence, the Claimant qualifies for one additional point (+1) in the area of Dyspnea.
- 6) 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)
- #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 was awarded 16 points on a PAS completed by WVMi on October 13, 2008 during her annual reevaluation.
- 3) As a result of the evidence presented at the hearing, one (1) additional point was awarded to the Claimant's LOC determination for a total of 17 points.
- 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 Department'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 27th Day of March, 2009.

Jennifer Butcher
State Hearing Officer