



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

November 2, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 1, 2011. 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 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 500, §§501.3.2.1 & 501.3.2.2)

Information submitted at the hearing reveals that while you continue to be medically eligible for participation in the Aged and Disabled Waiver Program, your Level of Care should be reduced from a level "D" to a level "C." 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 Aged and Disabled Waiver Services Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

Pc: Erika H. Young, Chairman, Board of Review
BoSS / WVMI



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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1896

**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 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 convened on November 1, 2011 on a timely appeal filed August 22, 2011.

It should be noted that the Claimant's Medicaid ADW Program benefits have continued at a Level "D" Level of Care pending a hearing decision.

II. PROGRAM PURPOSE:

The ADW Program is defined as a long-term care alternative that provides services that enable an individual to remain at or return home rather than receiving nursing facility (NF) care. Specifically, ADW services include Homemaker, Case Management, Consumer-Directed Case Management, Medical Adult Day Care, Transportation, and RN Assessment and Review.

III. PARTICIPANTS:

-----, Claimant's Granddaughter/Representative
-----, Claimant's Granddaughter/Representative
Kay Ikerd, RN, Bureau of Senior Services (BoSS)
Debra Lemasters, RN, West Virginia Medical Institute (WVMI)

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

All parties participated via telephone conference call.

IV. QUESTION 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 provided through the Medicaid Aged and Disabled Waiver (ADW) Services Program.

V. APPLICABLE POLICY:

Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, Section 501.3.2.1 and 501.3.2.2
Chapter 514 – Nursing Facility Services, Attachment 1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services - Section 501.3.2.1 and 501.3.2.2
- D-2 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated August 8, 2011
- D-2a Diagnostic verification from Dr. [REDACTED] office dated August 11, 2011
- D-3 Notice of Decision dated August 15, 2011

VII. FINDINGS OF FACT:

- 1) On August 8, 2011, the Claimant was medically assessed (D-2) to determine continued medical eligibility and assign an appropriate Level of Care, hereinafter LOC, for participation in the Aged/Disabled Waiver Services Program (ADW Program). It should be noted that the Claimant was receiving homemaker services at a Level "D" LOC at the time of the reevaluation.
- 2) On or about August 15, 2011, 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 was reduced to 124 hours per month (Level "C" LOC).
- 3) The Department cited Medicaid policy and called its witness to review the medical findings on the Pre-Admission Screening (PAS) Form. Debra Lemasters, RN, West Virginia Medical Institute (WVMI), reviewed the PAS (D-2) and testified that the Claimant was awarded 23 points for documented medical conditions that require nursing services. RN Lemasters testified that while the original PAS awarded only 21 points, the supplemental medical information provided in Exhibit D-2a allowed her to assign two (2) additional LOC points for a total of 23. The Department contends that pursuant to Medicaid policy, this finding is consistent with a LOC "C" (18-25 points), indicating the Claimant is eligible for 4 hours per day or 124 hours per month of homemaker services.

- 4) The Claimant's representatives contended that the Claimant's condition has not improved since the previous PAS was completed 1 year ago. They further purported that the Claimant should have been awarded 3 additional LOC points, as she is a Level-3 (total care) in bathing and dressing, and she is incontinent of bowel. A review of the evidence reveals the following regarding the contested areas:

Bathing – Evidence demonstrates the Claimant is able to wash her face, arms and hands. According to testimony presented by RN Lemasters, an individual can only be assessed as total care (Level-3), and receive 2 LOC points, if they are unable to assist or participate in the bathing process. Based on the evidence, the Claimant was correctly assessed at a Level-2 - she requires physical assistance with bathing – 1 point was appropriately awarded.

Dressing – An individual who qualifies at a Level-3 (total care) is unable to provide any assistance with dressing. The Claimant demonstrated (D-2, page 8 and 9) the ability to lift both arms up over her head, and she placed her arms through the sleeves of a gown during the assessment. The Claimant further demonstrated the ability to lift her feet off the floor and maintain a leg lift. While it is clear that the Claimant requires physical assistance with dressing, the evidence clearly demonstrates that she is able to direct her arms, legs and provide weight bearing assistance. Whereas the Claimant was correctly assessed at a Level-2 in dressing, no additional LOC points can be awarded.

Incontinence (bowel) – The Medicaid Provider Manual, Chapter 514 (Nursing Facility Services), Attachment 1 (Pre-Admission Screening Form), provides the following levels of bowel incontinence (Section 26.f.):

Level-1 Continent

Level-2 Occasional Incontinence, less than 3 times per week

Level-3 Incontinent

Level-4 Colostomy

The Claimant, and those present at the August 8, 2011 assessment, reported that the Claimant has episodes of bowel incontinence, but that the episodes of incontinence did not occur weekly. RN Lemasters testified that because incontinence does not occur weekly, she determined the Claimant was continent (Level-1), and no LOC points were awarded. However, a review of the assessed levels provided in policy indicates that any incontinence, occurring less than 3 times per week, qualifies as occasional incontinence (Level-2). Based on this finding, 1 additional LOC point is awarded to the Claimant.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2.1 and 501.3.2.2: 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
- #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 for documented medical conditions that require nursing services.
- 2) The Claimant was awarded 23 points on a PAS assessment completed by WVMI in August 2011.
- 3) Evidence submitted at the hearing demonstrates the Claimant should have been awarded 1 additional point at the time of the assessment.
- 4) In accordance with existing policy, an individual with 24 points qualifies as a level "C" LOC. Pursuant to Medicaid ADW Program Policy, the Claimant is eligible to receive 4 hours per day / 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 Medicaid Aged/Disabled, Title XIX (HCB), Waiver Services Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ day of November, 2011.

**Thomas E. Arnett
State Hearing Officer
Member, State Board of Review**