



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

December 22, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held December 16, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker service hours under the Medicaid Aged and 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, §§501.5.1.1(a) and 501.1.1(b).2.2)

Information submitted at the hearing reveals that you continue to require a Level of Care and services consistent with a Level "C" Level of Care (LOC) - 4 hours per day / 124 hours per month of homemaker services.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to reduce your homemaker service hours provided through 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
[REDACTED] Belington, WV

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-2237

**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 December 16, 2011 on a timely appeal filed October 18, 2011.

It should be noted that the Claimant's Medicaid ADW Program benefits have continued at a Level "C" 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

-----, Direct Care Worker, Hometown Care – Claimant's Witness

-----, RN, [REDACTED] - Claimant's Witness

-----, Case Manager, [REDACTED] – Claimant's Witness

Kay Ikerd, RN, Bureau of Senior Services (BoSS) – Department Representative

Debbie Sickles, RN, West Virginia Medical Institute (WVMI) – Department Witness

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

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 501.5.1.1(a) and 501.5.1.1(b)

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 501.5.1.1(a) and 501.5.1.1(b)
- D-2 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated August 30, 2011
- D-3 Notice of Decision dated August 31, 2011
- D-4 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated September 21, 2010

VII. FINDINGS OF FACT:

- 1) On August 30, 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 "C" LOC at the time of the reevaluation.
- 2) On or about August 31, 2011, the Claimant was notified via a Notice of Decision (D-3) that he continues to be medically eligible to participate in the ADW Program, however, the number of homemaker service hours was reduced to 93 hours per month (Level "B" 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 16 points for documented medical conditions that require nursing services. The Department contends that pursuant to Medicaid policy, this finding is consistent with a LOC "B" (10-17 points), indicating the Claimant is eligible for 3 hours per day or 93 hours per month of homemaker services.

- 4) The Claimant and his representatives contended that he should remain a LOC "C" as he should have been awarded additional points in the following areas of Exhibit D-2: (#23.j) 1 point for contractures, (#26.f) 1 point for occasional bladder incontinence, (26.j) 2 points for wheeling (Level-3, situational assistance) and (#28) 1 point for medication administration (prompting and supervision).

- 5) Testimony proffered by Debbie Sickles, RN, WVMI, indicates that the Claimant uses a motorized wheelchair with a controller on the left side and he denied requiring any situational assistance maneuvering out of his home or through doorways in his home. The Claimant and his representatives noted, however, that his motorized wheelchair is not reliable and that he must often use a manual wheelchair in the home. Because the Claimant has limited use of his right hand and right leg, he is unable to get through doorways in his home without assistance. While it is clear that the Claimant has some ability to manipulate his wheelchair, his inability to use his right leg and right hand to assist with maneuvering a manual wheelchair (when the motorized chair is broken) clearly supports the need for situational assistance. Two (2) additional points are assigned to the Claimant's LOC for wheeling (Level-3, situational assistance is required). Because two (2) points raises the Claimant's LOC point total to 18 - the minimum amount required for a Level "C" LOC - it would be moot to review the other contested areas as no further relief can be granted.

- 6) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.5.1.1(a) and 501.5.1.1(b): 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 and 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 16 LOC points on a PAS assessment completed by WVMI in August 2011.
- 3) Evidence submitted at the hearing demonstrates the Claimant should have been awarded no fewer than two (2) additional LOC points as he requires situational assistance with his manual wheelchair.
- 4) In accordance with existing policy, an individual with 18 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 **reverse** the Agency's proposal to reduce the Claimant's homemaker service hours under the Medicaid Aged and Disabled 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 December, 2011.

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