



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

May 26, 2011

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 25, 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 (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 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 Title XIX (HCB) 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**

-----,

**Claimant,**

v.

**Action Number: 11-BOR-953**

**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 May 24, 2011 on a timely appeal filed April 6, 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

-----, Claimant's Daughter/Homemaker, [REDACTED]

-----, Case Manager (CM), [REDACTED]

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

Teresa McCallister, RN, West Virginia Medical Institute (WVMI) – Department's witness

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

This hearing was convened 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 Services (ADW) 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

**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 for Aged/Disabled Waiver Services (PAS) dated 3/24/11
- D-3 Notice of Decision dated 3/31/11
- D-4 Medicaid Aged & Disabled Waiver Program Medical Necessity Evaluation Request.

**VII. FINDINGS OF FACT:**

- 1) On March 24, 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 March 31, 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 were reduced to 124 hours per month (Level "C" LOC).
- 3) The Department's representative cited Medicaid policy and called the Department's witness to review the medical findings on the Pre-Admission Screening (PAS) Form. Teresa McCallister, RN, West Virginia Medical Institute (WVMI), reviewed the PAS (D-2) and testified that the Claimant was awarded 24 points for documented medical conditions that require nursing services. 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 and her representatives contend that the Claimant should have been awarded two additional points – (#34) Claimant has had a diagnosis of multi-infarct by her physician for several years and (#35) Prognosis should be terminal.

- 5) The Department's objection to the Claimant's introduction of evidence in the form of a prescription note pad, dated May 19, 2011, displaying a diagnosis of multi-infarct was upheld. This information was neither provided to RN McCallister at the time of the assessment, nor submitted timely pursuant to the evidence requirement found in the scheduling order issued April 29, 2011. Moreover, Exhibit D-4 (Medical Necessity Evaluation Request) confirms a diagnosis of multi-infarct was not provided at the time of the assessment and terminal was not provided as a prognosis by the Claimant's physician. While the Claimant's representatives contend that the omitted diagnosis and prognosis error is the result of the Claimant being treated by a new physician, in the absence of evidence to indicate RN McCallister was made aware of these concerns at the time of the assessment, no additional points can be awarded.
- 6) 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 for nursing services on the PAS assessment tool.

- 2) The Claimant was awarded 24 points on a PAS assessment completed by WVMI in March 2011.
- 3) Evidence submitted at the hearing fails to demonstrate the Claimant should have been awarded any additional points 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 May, 2011.**

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