



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 31, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held May 29, 2012. 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 WVM. (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 require a level of care and services consistent with a Level "B" Level of Care (LOC). Therefore, Personal Options Service Limits cannot exceed \$1,379.62 per month.

It is the decision of the State Hearing Officer to **uphold** 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  
Public Partnerships, LLC

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

**IN RE: -----,**

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-1113**

**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 telephonically on May 29, 2012, on a timely appeal filed March 21, 2012.

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  
Kay Ikerd, RN, Bureau of Senior Services (BoSS)  
Connie Sankoff, 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.

**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, Sections 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 - Sections 501.5.1.1(a) and 501.5.1.1(b)
- D-2 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services - dated 3/20/12
- D-3 Notice of Decision dated 3/21/12
- D-4 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services - dated 2/22/11

**VII. FINDINGS OF FACT:**

- 1) On March 20, 2012, the Claimant was medically assessed (D-2) to determine continued medical eligibility and assign an appropriate Level of Care (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 March 21, 2012, 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 notice provides for a reduction in monthly budgeted homemaker services. As a matter of record, homemaker services were reduced to a Level "B" Level of Care - 3 hours per day/93 hours per month - (Monthly Personal Options Service Limits - \$1,379.62)
- 3) The Department, represented by Kay Ikerd, RN, Bureau for Senior Services (BoSS), cited Medicaid policy and called its witness to review the medical findings on the Pre-Admission Screening (PAS) Form (D-2). The Department noted that the previous PAS dated February 22, 2011 (D-4) awarded the Claimant 18 LOC points, and that is why the Claimant was receiving services at a Level "C" LOC. Connie Sankoff, RN, West Virginia Medical Institute (WVMI), reviewed the current PAS (D-2) and testified that the Claimant was awarded 17 points for documented medical conditions that require nursing services. The Department contended that pursuant to Medicaid policy, this finding is consistent with a LOC "B" (10-17 points).
- 4) The Claimant contended that she should remain a Level "C" LOC because she should have

been awarded one (1) additional point in the area of transferring (should be Level 3, one person assistance) and one (1) additional point in the area of wheeling (should be Level 3, situational assistance required). The following will address each of the contested areas:

Transferring – The Claimant was assessed a Level 2 (supervised/assistive device) in the functional area of transferring as RN Sankoff testified the Claimant reported that she locks her manual wheelchair on both sides with her right hand, holds onto the dining room table with her right hand, pushes up with her right leg, stands and reaches for her cane. According to RN Sankoff, the Claimant further reported that she can slide onto her bed, which is wheelchair height, by holding onto the mattress with her right hand. It was further noted that transferring out of the bathtub only counts in the functional area of bathing, and this appears to be why the Claimant was erroneously awarded a Level 3 in transferring the previous year. While the Claimant testified that she sometimes misunderstands questions, and that she requires occasional assistance with transferring out of bed or onto her bed-side potty chair, RN Sankoff purported that when questioned about various circumstances, the Claimant consistently indicated that she was able to transfer from all the furniture in her home. Because the Claimant was alert and oriented at the time of the medical assessment, there was no reason for RN Sankoff to challenge the Claimant’s report of her transfer abilities. Evidence reveals that transferring was correctly assessed based on the information provided by the Claimant during the medical assessment. No additional LOC points can be awarded in transferring.

Wheeling – The Claimant was assessed as independent (Level 1) in the functional area of wheeling because she reported during the assessment she did not require any assistance in the home. The Claimant testified at the hearing that she can push her wheelchair around the house with her right foot, but it causes her right foot to swell. This information, however, was not provided during the assessment and is not corroborated by any supporting evidence. As a result, no additional LOC points can be awarded for wheeling.

- 5) 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

#### **Personal Options Service Limits**

Personal Options members have a monthly budget based on their Service Level. The Personal Options monthly budget can be used flexibly within the month but must be justified and documented on the approved Participant-Directed Service Plan/Spending Plan.

### **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 17 LOC points on a PAS assessment completed by WVMI in March 2012.
- 3) Evidence submitted at the hearing fails to demonstrate the Claimant should have been awarded any additional LOC points.
- 4) In accordance with existing policy, an individual with 17 points qualifies as a Level "B" LOC. Pursuant to Medicaid ADW Program Policy, the Claimant is eligible to receive a monthly budget of \$1,379.62 for ADW 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 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 May, 2012.**

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