



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

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

September 13, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 10, 2010. 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, Sections 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 "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 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: 10-BOR-1139

**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 was originally scheduled to convene on June 16, 2010 but was rescheduled due to a scheduling conflict presented by the Department. The hearing was subsequently rescheduled to convene on July 20, 2010 but was rescheduled after the Claimant established good cause for failure to appear without notice. The hearing convened on September 10, 2010 on a timely appeal filed March 30, 2010.

It should be noted that the Claimant's 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

-----, Claimant's daughter/representative

Kay Ikerd, RN, Bureau of Senior Services (BoSS) (Participated telephonically)

Debra Lemasters, RN, West Virginia Medical Institute (WVMI) (Participated telephonically)

Presiding at the hearing was Thomas E. Arnett, 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 services hours provided through the Medicaid Aged and Disabled Waiver Program.

V. APPLICABLE POLICY:

Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, Section 501.3.2.1 & 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 & 501.3.2.2
- D-2 Pre-Admission Screening for Aged/Disabled Waiver Services (PAS) dated March 15, 2010
- D-3 Additional information received from Dr. [REDACTED] (Faxed March 16, 2010)
- D-4 Notice of Decision dated March 16, 2010
- D-5 Medical Necessity Evaluation Request, signed by the Claimant's physician on February 9, 2010

VII. FINDINGS OF FACT:

- 1) On March 15, 2010, 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). 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 16, 2010, the Claimant was notified via a Notice of Decision (D-4) that she continues to be medically eligible to participate in the ADW Program, however, the amount of homemaker service hours were reduced to 93 hours per month (Level "B" LOC).
- 3) The Department's representative cited Medicaid policy and called its witness to review the medical findings on the Pre-Admission Screening (PAS) Form. Debra Lemasters, RN, 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 noted 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 her representative contend that the Claimant should have been awarded one

additional point in each of the following areas of Exhibit D-2: Bladder incontinence (#26.e), Decubitus (#24), and Dementia (#34). The areas of bathing, dressing and grooming were questioned, however, it was established at the hearing that the Claimant participates in these activities (not total care) and she has been appropriately assessed at a level 2 (physical assistance).

Incontinence (bladder) – The Claimant’s representative testified that the Claimant suffers from bladder incontinence when she coughs and sneezes. The Claimant is taking medication for this condition, and according to the Claimant’s representative, episodes typically require that her clothing be changed. While it was noted that episodes of incontinence occur 3 or 4 times per week, incontinent supplies cannot be used by her mother because she is too large. Exhibit D-2 notes on page 9 of 10 that the Claimant and her daughter denied bladder incontinence on the day of the assessment and RN Lemasters testified that both denied the use of incontinent supplies. RN Lemasters acknowledged that the Claimant is taking medication for bladder spasms and testified that while it often resolves the issue, she would have awarded the Claimant a point in this area if she would have been told about the episodes of bladder incontinence. While it is apparent that the Claimant and her daughter misinformed RN Lemasters at the assessment, the evidence supports the assignment of one point (+1) for bladder incontinence.

Dementia – RN Lemasters testified that Dementia is a diagnosis provided by a physician and the Claimant is not on any medications to treat this condition. The Department submitted Exhibit D-5 and noted that the Claimant’s physician did not include a diagnosis of Dementia. As a result, the evidence fails to support the assignment of any additional points.

Decubitus - The Claimant’s representative testified that they were treating a decubitus on the Claimant up until two weeks ago and that she currently has a mouth ulcer. However, the Claimant’s representative acknowledged that the Claimant did not have a decubitus at the time of the assessment and RN Lemasters clarified that a mouth ulcer is not a decubitus as a decubitus ulcer appears on the skin and are caused by pressure. The evidence clearly demonstrates that no additional points can be awarded in this area.

- 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.
- 2) The Claimant was awarded 16 points on a PAS assessment completed by WVMi in March 2010.
- 3) The evidence submitted at the hearing warrants the assignment of one (1) additional Level of Care point for bladder incontinence. The Claimant's cumulative point total is therefore 17.
- 4) In accordance with existing policy, an individual with 10-17 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 Agency'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:

Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ day of September, 2010.

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