



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

July 22, 2010

C/O -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 15, 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, §§501.3.2.1 & 501.3.2.2)

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 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-1316

**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 July 15, 2010 on a timely appeal filed May 10, 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 Aunt/Health Care Surrogate

-----, CM, [REDACTED]

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. 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 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 April 27, 2010
- D-3 Notice of Decision dated May 3, 2010

VII. FINDINGS OF FACT:

- 1) On April 27, 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 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 May 3, 2010, 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 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, West Virginia Medical Institute (WVMI), reviewed the PAS (D-2) and testified that the Claimant was awarded 17 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 her representatives contend that the Claimant should have been awarded one additional point in each of the following areas of Exhibit D-2: (23.e.) Paralysis, (26.g.) Orientation (intermittent, level-2), and (26.m.) Communication. The Department noted that points can only be awarded in section #23 if the individual has a current diagnosis of the condition provided by a physician and/or taking prescription medications to treat that condition. The following will address each of the contested areas:

Paralysis (23.e.) – Debra Lemasters, RN, testified that she awarded the Claimant a point for contractures in her left hand and this diagnosis was confirmed by the Claimant’s physician. However, she was unable to award a point for paralysis as this diagnosis can only be made by a physician. Based on the evidence, a LOC point cannot be added for paralysis.

Communication (26.m.) – The Claimant’s representative indicated there are occasions when the Claimant’s receptive communication skills appear impaired – the Claimant has difficulty understanding what is being said to her. RN Lemasters testified, however, that the Claimant demonstrated unimpaired communication skills during the assessment and individuals who qualify for LOC points in this area must be assessed at a level 3 (require an assistive device, sign language etc...) or level 4 (cannot communicate at all). The evidence reveals that the Claimant was correctly assessed at a level 1 in communication (not impaired). As a result, no additional LOC points were identified.

Orientation (26.g.) – The Claimant’s representatives presented testimony to indicate the Claimant suffered a Traumatic Brain Injury (TBI) when she was younger and this causes episodes of intermittent disorientation (level-2). ----- testified that it depends on the day and time but she has witnessed occasions when the Claimant is not oriented to person, place or time. -----purported that the Claimant cannot be left alone for this reason and while she has been to her home several times, there have been occasions when the Claimant does not know who she is or why she is there. Exhibit D-2 confirms that RN Lemasters documented (D-2, page 3 and 4) that the Claimant’s mental disorders include MR [Mental Retardation], agitation, as well as diagnoses of Bipolar Disease, Depression and Traumatic Brain Injury. As a matter of record, Ms. Lemasters acknowledged that intermittent disorientation is common with individuals who have suffered a TBI. Based on the evidence, the Claimant orientation is a level 2 (intermittent disorientation) - one (+1) additional LOC point is therefore awarded.

- 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 17 points on a PAS assessment completed by WVMi in April 2010.
- 3) Evidence submitted at the hearing identified one (1) additional point in the area of orientation (intermittent disorientation – level 2).
- 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 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 July, 2010.

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