



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

Martha Yeager Walker  
Secretary

July 28, 2009

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 8, 2009. 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 to participate in the Aged and Disabled Waiver Program, your Level of Care should be reduced from a level "D" Level a level "C" Level of Care. 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  
[REDACTED]  
WVMI

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

-----,

**Claimant,**

**v.**

**Action Number: 09-BOR-1022**

**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 concluded on July 28, 2009 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 23, 2009 but was rescheduled at the request of the Department and convened on July 8, 2009 on a timely appeal filed March 30, 2009.

It should be noted that the Claimant's 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

-----, CM, Companion Care

-----, RN, Companion Care

-----, Claimant's friend

-----, Homemaker, Companion Care

Angel Khosa, LSW, BoSS (Participated telephonically)

Debra Lemasters, RN, 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(s) to be decided is whether or not the Department was correct in its proposal to reduce the Claimant 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 3/20/09
- D-3 Notice of Decision dated 3/25/09

**VII. FINDINGS OF FACT:**

- 1) On March 20, 2009, 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 "D" LOC at the time of the reevaluation.
- 2) On or about March 25, 2009, the Claimant was notified via a Notice of Decision (D-3) that he continues to be medically eligible for participation in the ADW Program, however, the amount of homemaker service hours were reduced to 124 hours per month (Level "C" LOC).
- 3) The Department reviewed Medicaid policy and called its witness to review the medical findings on the Pre-Admission Screening (PAS) Form completed on March 20, 2009. The WVMI RN testified that the Claimant was awarded 22 points for documented medical conditions that require nursing services. The Department noted that this finding [22 points] is consistent with a level "C" LOC (18-25 points) making the Claimant eligible for 4 hours per day or 124 hours per month of homemaker services.

- 4) The Claimant and his representatives contend that he should remain a LOC “D” as he should have been awarded additional points in the following areas: **Bathing** (should be Level 3 - total care), **Grooming** (should be level 3 – total care), **Communication** (should be Level 3 – understandable with aids) and **Bowel Incontinence** (should be Level 2 – occasional incontinence). Pursuant to Medicaid policy, four (4) additional points (26-44 points) must be identified in order for the Claimant to remain a Level “D” LOC.
- 5) Policy dictates that an individual is assessed at a level-3 in Communication when they require the use of aids (placing a figure over a trachea, a message board, a computer, sign language, etc... to communicate). Testimony reveals that the Claimant is “difficult” to understand and must often repeat himself. It was also noted that individuals who are around the Claimant frequently can understand him more easily than those who are not. While it is clear that communication is impaired, it is understandable (with effort) and therefore does not qualify as a level 3. Based on the evidence, no additional points can be awarded in the area of communication. Because a point cannot be awarded in communication and the four (4) points required to remain a LOC “D” are not attainable, it is moot to review each of the contested areas in detail.
- 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 on the PAS assessment tool.
- 2) The Claimant received 22 points on a PAS completed by WVMi in March 2009.
- 3) The Claimant needed to establish that four (4) additional points (26 total points) were present during the March 2009 medical assessment. The evidence submitted at the hearing fails to meet the minimum point total required to qualify for a level "D" LOC.
- 4) In accordance with existing policy, an individual with 18-25 points qualifies as a level "C" LOC and is therefore 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 Aged/Disabled, Title XIX (HCB), Waiver Program.

### **X. RIGHT OF APPEAL:**

See Attachment

### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 28<sup>th</sup> Day of July, 2009.**

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