



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

October 28, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 14, 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 WVM. (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 "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
CCWV

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

-----,

Claimant,

v.

Action Number: 09-BOR-1396

**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 October 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 September 8, 2009 and again on September 15, 2009 but was rescheduled and convened on October 14, 2009 on a timely appeal filed June 3, 2009.

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

-----, Case Manager (CM), Catholic Charities of West Virginia (CCWV)

-----, Homemaker RN, CCWV

-----, Homemaker, CCWV

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 May 19, 2009
- D-3 Notice of Decision dated May 21, 2009
- D-4 Medical Necessity Evaluation Request, signed by the Claimant's physician on April 7, 2009

VII. FINDINGS OF FACT:

- 1) On May 19, 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 "C" LOC at the time of the reevaluation.
- 2) On or about May 21, 2009, 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. The WVMI RN reviewed the PAS (D-2) and testified that the Claimant was awarded 16 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.d.) Arthritis, (23.f.) Dysphagia, (26.f.) Bowel Incontinence (Level-3), and (27.e.) Continuous Oxygen. The Department noted that points can only be awarded in section #23 if the individual has a current diagnosis of the condition and/or taking prescription medications to treat that condition.

Arthritis - The Claimant testified that she was previously on Celebrex for arthritis and arthritis is not a condition that goes away. She stated that she was taken off Celebrex when she suffered another illness and acknowledged that she is not currently taking any medications to treat her arthritis. Because diagnoses must be current, and the Claimant is not taking any medications to treat arthritic symptoms, a point cannot be awarded in this area.

Dysphagia – Debra Lemasters testified that the only way the Claimant can get a point in this area is to demonstrate a diagnosis. The Claimant testified that her old family doctor had originally diagnosed this condition but she indicated that the current physician knows very little about her.

Professional and Technical Care needs, *Oxygen* – In order to qualify for a point in this section, the individual must use oxygen 24 hours per day, 7 days a week. Documentation found in section #27 reveals that the Claimant reported she used oxygen “as needed” and that she uses a CPAP when she sleeps. While the Claimant testified that her oxygen is ordered to be used continuously, page 8 of 9 (Professional & Technical Care Needs) notes that the Claimant was not using oxygen during the assessment and she reported that she does not use it continuously. Based on the evidence, a point cannot be awarded for continuous oxygen use.

Bowel Incontinence - The Claimant testified that she misunderstood the question regarding how often bowel incontinence occurred. The WVMI RN testified that bowel incontinence was reported to occur one (1) time per week, as documented on page 8 of Exhibit D-2. Because of the reported misunderstanding about the number of bowel incontinence episodes, this issue was explored thoroughly at the hearing. A review of the testimony reveals that neither the Claimant nor her witnesses were able, with any degree of certainty, to provide a weekly average of bowel incontinence. In the absence of any evidence to indicate bowel incontinence occurs three (3) or more times per week (Incontinent - level 3), an additional point cannot be 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 16 points on a PAS assessment completed by WVMi in May 2009.
- 3) The evidence submitted at the hearing fails to warrant the assignment of any additional Level of Care points.
- 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 28th day of October, 2009.

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