



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

November 2, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 20, 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 you continue to require the level of care and services consistent with a level "C" Level of Care (LOC). 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 **reverse** 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
[REDACTED] Committee on Aging

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

-----,

Claimant,

v.

Action Number: 09-BOR-1546

**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 November 2, 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 convened on October 20, 2009 on a timely appeal filed July 17, 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

-----, CM [REDACTED] Committee on Aging

-----, Homemaker, [REDACTED] Committee on Aging

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

Stacy Leadman, 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 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 June 30, 2009
- D-3 Notice of Decision dated July 8, 2009

Claimant's Exhibits:

Claimant's -1 Documentation submitted by -----(10 faxed pages) - faxed on October 14, 2009

VII. FINDINGS OF FACT:

- 1) On June 30, 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 July 8, 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. Stacy Leadman, RN, 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 (1) additional point for Medication Administration and Prognosis, and two (2) additional points as her vision is not correctable. The Department's objection to the introduction of documentation dated subsequent to the PAS assessment date is noted and these documents. Documents dated subsequent to the PAS

Stacy Leadman, RN, WVMI testified that the assessment only addresses the effect of vision on the individual's functional ability, not the medical condition of the eye itself. The assessment notes that the Claimant's vision in her left eye is improved with glasses and the Claimant was able to sign the PAS form. ----- testified that the Claimant is blind in her right eye and her vision in her left eye is so poor that she needs someone to place her finger next to the area where her signature goes. -----contends that the Claimant should be awarded two (2) points as her vision is not correctable as assessed in the previous PAS assessment. -----further testified that the Claimant requires prompting and supervision with medication administration as a result of her vision problems and poor memory. ----- purported that although the Claimant fills her pill planner by herself, she must check the Claimant's planner to make sure it is set up correctly. Vision and memory problems were again noted to be the reason for requiring prompting and supervision with medication administration. While the determination of correctable vision is a discretionary call made by the assessing nurse, it is both reasonable and rational to conclude that the Claimant requires some oversight with her medication administration as a result of her poor vision and noted memory problems. One additional point is therefore awarded in the area of medication administration (+1) – the Claimant requires prompting and supervision.

According to -----, the Claimant has end stage COPD and was listed as terminal on her last PAS. The Department noted, however, that this information is provided by the Claimant's doctor on the physician referral form. While Claimant's Exhibit-1 includes correspondence from the Claimant's physician indicating she remains terminal, this information is dated October 13, 2009 and was not available to WVMI at the time of the assessment. Because the Claimant's physician did not indicate the Claimant was terminal on the physician referral form, and subsequent information received in support of a terminal prognosis was not submitted timely, 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 17 points on a PAS assessment completed by WVMi in May 2009.
- 3) The evidence submitted at the hearing reveals that one (1) additional LOC point is awarded in the area of medication administration – the Claimant requires prompting and supervision.
- 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 or 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 2nd day of November, 2009.

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