



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P. O. Box 2590  
Fairmont, WV 26555

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

July 10, 2009

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C/O -----  
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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 11, 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 your Level of Care was assessed correctly in December 2008. As a result, you are eligible to receive four (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

cc: Erika H. Young, Chairman, Board of Review  
BoSS  
WVMI  
CCIL

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

-----,

**Claimant,**

**v.**

**Action Number: 08-BOR-2646**

**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 10, 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 March 19, 2009 but was rescheduled and convened on June 11, 2009 on a timely appeal filed December 18, 2009.

It should be noted that the Claimant's benefits have continued 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  
-----, WV Choice, Homemaker  
-----, Brother / Guardian  
-----, RN, WV Choice  
-----, CM, CCIL  
Kay Ikerd, RN, BoSS  
Debra LeMasters, RN, WVMi

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 the Department was correct in its proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled Waiver (HCB) 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 (PAS) for Aged/Disabled Waiver Services dated 12/2/08
- D-3 Notice of Decision dated December 17, 2008

#### **VII. FINDINGS OF FACT:**

- 1) On December 2, 2008, 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 December 17, 2008, 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 (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. The WVMi RN reviewed the PAS form (D-2) and testified that the Claimant was awarded 24 points for documented medical conditions that require nursing services. She testified that this finding is consistent with a LOC "C" (18-25 points) making the Claimant eligible for 4 hours per day or 124 hours per month of homemaker services.
- 4) The Claimant's representatives contend that the Claimant should remain a LOC "D" as he should have been awarded two (2) additional points in the areas of Grooming (should be level 3) and Dressing (should be level 3). Pursuant to Medicaid policy, two (2) additional points must be identified in order for the Claimant to qualify at a Level "D" LOC.

- 5) In order to qualify as a level 3 (total care) in dressing, the individual must be unable to effectively participate in any aspect of dressing - including weight bearing movements. According to the WVM RN, an individual who qualifies as total care (level 3) would require that his arms and legs be lifted for them and they would be unable to stand and support their own weight. The evidence reveals that while the Claimant's multiple contractures limit his participation in dressing, he is able assist with guiding/pushing his arms through the sleeves of his shirt, lift his legs to assist with getting his pants on, and he can stand and support himself while his pants are being pulled up. Based on the evidence, the Claimant was appropriately assessed at a level 2 (physical assistance) and awarded one (1) point toward his Level of Care.

Because a favorable finding in the area of Grooming is moot, that area will not be explored for the purpose of this decision.

- 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 24 points on a PAS assessment completed by WVMI in December 2008 and was determined to be a LOC "C." Two additional points (26-44) were required in order to qualify at level "D" LOC.
- 3) The evidence submitted at the hearing fails to identify two (2) additional points. Pursuant to Medicaid policy, an individual with 18-25 points qualifies at a level "C" LOC and is therefore eligible to receive 4 hours per day / 124 hour 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 10<sup>th</sup> Day of July, 2009.**

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**Thomas E. Arnett  
State Hearing Officer**