



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

February 4, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 20, 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 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 "D" to 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 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


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

-----,

Claimant,

v.

Action Number: 09-BOR-2022

**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 February 4, 2010 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 January 20, 2010 on a timely appeal filed October 13, 2009.

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 mother / witness

-----, Personal Care Provider, [REDACTED]

-----, Case Manager (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 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 October 2, 2009
- D-3 Notice of Decision dated October 14, 2009

VII. FINDINGS OF FACT:

- 1) On October 2, 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 Program). 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 October 14, 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 124 hours per month (Level "C" 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, WVMJ reviewed the PAS (D-2) and testified that the Claimant was awarded 21 points for documented medical conditions that require nursing services. The Department contends that pursuant to Medicaid policy, this finding is consistent with a LOC "C" (18-25 points), indicating the Claimant is eligible for 4 hours per day or 124 hours per month of homemaker services.

- 4) The Claimant and her representatives contend that the Claimant should have been awarded one additional point in the areas of Bathing (Level 3, total care), Dressing (Level 3 total care) and Grooming (Level 3, total care), and two (2) additional points for Wheeling (Level 3 situational assistance/ total. The following findings will address each of the contested areas.

Bathing – The Claimant was assessed at a level 2 (physical assistance) in bathing and subsequently awarded one (1) point toward her LOC. RN Lemasters testified that if an individual can participate in bathing, they cannot be assessed as total care. Testimony received at the hearing is consistent with the information documented by the RN Lemasters - The Claimant is able to wash her chest, face, arms and tops of her legs when bathing. Based on the evidence, the Claimant was properly assessed at a level 2 as she can effectively participate in bathing – no additional points can be awarded.

Dressing – In order to qualify at a level 3 (total care) in dressing, the individual must be unable to participate at any level. Evidence received at the hearing reveals that the Claimant directs her arms into the sleeves of her shirt, she can place her shirt over her head and provides assistance with putting on her bra. While the evidence indicates the Claimant requires total care with dressing below the waist, she can assist with dressing her upper torso. As a result, the Claimant has been correctly assessed at a level 2.

Grooming – Undisputed evidence reveals that the Claimant can brush her teeth, brush her hair and put her hair in a ponytail. While it was noted that she unable to get the ponytail as “tight” as she would like, and that she requires assistance with nail care and shaving her legs, the Claimant is effectively participating in grooming activities. Based on the evidence, no additional points can be awarded in grooming as the Claimant was correctly assessed at a level 2.

Wheeling – The Claimant uses a power wheelchair to get around in her home, and according to RN Lemasters, she inquired if there were situations when the Claimant would be unable to use her power wheelchair. RN Lemasters testified that there were no extraordinary situations reported and that most power wheelchairs are reliable. Testimony provided by the Claimant and her witnesses indicate her power wheelchair is often out of service, however, this information was not disclosed during the assessment. Based on the information provided to the WVM RN, the assessment is correct – no additional points can be awarded in wheeling.

- 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 21 points on a PAS assessment completed by WVMi in October 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 18-25 points qualifies at 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 **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 4th day of February, 2009.

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