



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

October 11, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held October 7, 2011. 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 "C" to a level "B." 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 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 / WVMI
[REDACTED]

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

INRE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1542

**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 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 15, 2011, but was rescheduled due to a conflict presented by the Department, and convened on October 7, 2011, on a timely appeal filed July 8, 2011.

It should be noted that the Claimant's Medicaid ADW Program 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

-----, [REDACTED] Services

Sarah Birkhead, RN, Bureau of Senior Services (BoSS)

Heather Randolph, RN, West Virginia Medical Institute (WVMI)

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

All parties participated via a telephone conference call.

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 service hours provided through the Medicaid Aged and Disabled Waiver Services (ADW) Program.

V. APPLICABLE POLICY:

Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, Section 501.3.2.1 and 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 and 501.3.2.2
- D-2 Pre-Admission Screening for Aged/Disabled Waiver Services (PAS) dated June 29, 2011
- D-3 Notice of Decision dated June 30, 2011

VII. FINDINGS OF FACT:

- 1) On June 29, 2011, 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 "C" LOC at the time of the reevaluation.
- 2) On or about June 30, 2011, the Claimant was notified via a Notice of Decision (D-3) that he 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 cited Medicaid policy and called its witness to review the medical findings on the Pre-Admission Screening (PAS) Form. Heather Randolph, RN, West Virginia Medical Institute (WVMI), reviewed the PAS (D-2) and testified that the Claimant was awarded 15 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 his witness, ----, [REDACTED] Services, contend that the Claimant should have been awarded two (2) additional points – One (1) point for Eating (level-2) and One (1) point for bladder incontinence.
- 5) A review of the testimony and documentation reveals that the Claimant was correctly assessed at a level-1 for Eating (Self/Prompting). The Claimant can cut his own food and feed himself without assistance. The area of food preparation was mentioned (peeling potatoes), however, food preparation is not considered when establishing a functional deficit or assigning points for a level of care evaluation. Pursuant to the testimony of RN Randolph, Bladder incontinence is assessed by determining whether the individual has control of their bladder. The fact that an individual uses a potty chair, a urinal, or other devices has nothing to do with the assessment. In this case, the Claimant testified that he bladder control but sometimes has difficulty making it to the restroom swiftly due to mobility issues. Based on the evidence, the Claimant was correctly assessed as continent of bladder.
- 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 for documented medical conditions that require nursing services.
- 2) The Claimant was awarded 15 points on a PAS assessment completed by WVMi in June 2011.
- 3) Evidence submitted at the hearing fails to demonstrate the Claimant should have been awarded any additional points at the time of the assessment. In fact, the Claimant contested only two (2) LOC points, and if awarded, the Claimant would have continued to be one (1) point short of qualifying for a level "C" LOC.
- 4) In accordance with existing policy, an individual with 15 points qualifies as a level "B" LOC. Pursuant to Medicaid ADW Program Policy, the Claimant is eligible to receive 3 hours per day / 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 Medicaid Aged/Disabled, Title XIX (HCB), Waiver Services Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ day of October, 2011.

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