



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

November 16, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 15, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker service hours under the Medicaid Aged and Disabled 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 you continue to require a Level of Care and services consistent with a level "D" Level of Care (LOC) - 5 hours per day / 155 hours per month of homemaker services.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to reduce your homemaker service hours under the Medicaid Aged and Disabled Waiver Services Program.

Sincerely,

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

Pc: Erika H. Young, Chairman, Board of Review
BoSS / WVM



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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1839

**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 convened on November 15, 2011 on a timely appeal filed August 16, 2011.

It should be noted that the Claimant's Medicaid ADW Program benefits have continued at a Level "D" 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

-----, Claimant's Brother/Guardian

-----, Claimant's Homemaker, [REDACTED]

-----, Case Manager (CM) [REDACTED]

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

Debra Lemasters, 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 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 (ADW) Services 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
Medicaid Provider Manual, Chapter 514 (Nursing Facility Services), Attachment 1 (Pre-Admission Screening Form)

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 (PAS) for Aged/Disabled Waiver Services dated August 3, 2011
- D-2a Diagnostic verification provided by Dr. [REDACTED] office dated August 5, 2011
- D-3 Notice of Decision dated August 9, 2011

VII. FINDINGS OF FACT:

- 1) On August 3, 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 "D" LOC at the time of the reevaluation.
- 2) On or about August 9, 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 was reduced to 124 hours per month (Level "C" LOC).
- 3) The Department cited Medicaid policy and called its witness to review the medical findings on the Pre-Admission Screening (PAS) Form. Debra Lemasters, RN, West Virginia Medical Institute (WVMI), reviewed the PAS (D-2) and testified that the Claimant was awarded 24 points for documented medical conditions that require nursing services. Because RN Lemasters acknowledged she forgot to request verification of a diagnosis of dyspnea (D-2a), and it was reported by history on the day of the assessment, the Department stipulated that one (1) additional point should be awarded for a total of 25 LOC points. The Department contends, however, 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 / 124 hours per month of homemaker services.

- 4) The Claimant, by his representatives, contends that he should remain a LOC “D” as he should have been awarded 4 additional LOC points. The Claimant contends that he should have been assessed as total care (Level-3, 2 LOC points for each area instead of 1 LOC point) in eating, bathing, dressing and grooming. The Department contends that the Claimant was correctly assessed at a Level-2 in each of the contested areas and was appropriately awarded one LOC point for each.

RN Lemasters documented in Exhibit D-2 that the Claimant is unable to complete several grooming tasks due to his impaired grasp, but noted he has the functional ability to comb and wash his hair, and brush his teeth. ----- testified that she has been providing care for the Claimant for 8 years. -----testified that the Claimant cannot wash or comb his hair, or brush his teeth due to grasp impairment and range of motion limitations in his arms and shoulders due to arthritis. While RN Lemasters testified that the Claimant’s physician’s office did not report a limited range of motion in the Claimant’s shoulders or arms, credible testimony presented at the hearing reveals the Claimant should have been assessed at a Level-3 (total care) in grooming. One (1) additional Level of Care point is therefore awarded. Because this finding restores the Claimant’s LOC to a Level “D” (26 LOC points), the other contested areas will not be address as no further relief can be granted.

- 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 and 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 24 LOC points on a PAS assessment completed by WVMI in August 2011. One additional point was awarded for dyspnea, as agreed by the Department, bringing the Claimant's LOC point total to 25.
- 3) Evidence submitted at the hearing demonstrates the Claimant should have been awarded 1 additional LOC point for grooming (Level-3, total care).
- 4) In accordance with existing policy, an individual with 26 points qualifies as a Level "D" LOC. Pursuant to Medicaid ADW Program Policy, the Claimant is eligible to receive 5 hours per day / 155 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 Medicaid Aged and Disabled 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 November, 2011.

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