



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 22, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 16, 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 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." As a result, you are eligible to receive 3 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 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 / WVMI
[REDACTED]

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1951

**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 16, 2011 on a timely appeal filed September 1, 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's niece/representative

-----, RN, [REDACTED]

Kathy Taylor, CM, MVA

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

Debra Sickles, 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 23, 2011
- D-3 Notice of Decision dated August 24, 2011

VII. FINDINGS OF FACT:

- 1) On August 23, 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 23, 2011, 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 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. Debbie Sickles, RN, West Virginia Medical Institute (WVMI), reviewed the PAS (D-2) and testified that the Claimant was awarded 20

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, through her representatives, contended that she should remain a LOC “D” as she should have been awarded 7 additional points - 1 point for *dressing* (26.c should be Level-3, total care), 1 point for *grooming* (26.d should be Level-3, total care), 1 point for *wheeling* (26.j should be Level-3), 2 points for *hearing* (26.j should be Level-3) and 2 points for *communication* (26.m should be Level-3). The following will address the findings in each of the contested areas:

Dressing – In order to qualify as a Level-3 (total care) in dressing, the individual must be unable to participate at any level with dressing. Testimony and documentation received at the hearing reveals that the Claimant is able to lift her arms and assist with directing her hands through the sleeves of her shirt and she is able to assist with pulling up her pants. While the Claimant’s level of participation in the functional area of dressing is minimal, the evidence demonstrates that she is able to assist with directing her arms (weight bearing) and pulling up her pants. Whereas the Claimant was correctly assessed as requiring physical assistance (Level-2), no additional LOC points can be awarded in this functional area.

Grooming – The Claimant was assessed as requiring physical assistance (Level-2) because she denied requiring any assistance with mouth care. Representatives speaking on behalf of the Claimant contended that she is only able to clean her dentures because the supplies are brought to her. The evidence indicates that the Claimant is total care with every other area of grooming, however, because she is assisting with her oral hygiene, she does not qualify for total care (Level-3) in grooming. No additional LOC points can be awarded.

Wheeling – Policy stipulates that an individual may only be awarded a LOC point in wheeling if the individual has been assessed at a Level 3 or 4 in walking (requires 1 or 2-person physical assistance) in the home in order to use Level 3 or 4 for wheeling in the home. Evidence submitted at the hearing reveals that the Claimant was assessed at a Level-2 in walking (supervised/assistive device) and that she only uses a wheelchair outside of her home. While it was noted that the Claimant cannot ambulate long distances, and that she uses a walker to ambulate in her home, the Claimant was correctly assessed at a Level-2 in walking (supervised/assistive device) and a Level-1 in wheeling. As a result, no additional LOC points can be assigned in the functional area of wheeling.

Hearing – According to policy, an individual can qualify for 2 LOC points if hearing is determined to be Level-3, “impaired/not correctable.” RN Sickles testified that the Claimant was able to hear and understand her questions, but acknowledged the Claimant often required repeats and speech must be louder than a normal speaking voice. While the Claimant’s representatives expressed concern with regard to the Claimant’s ability to hear, testimony submitted on the Claimant’s behalf is consistent with RN Sickles’ assessment. The Claimant was correctly assessed at a Level-2 “impaired/correctable” - No additional LOC points can be awarded.

Communication – The Department contends that the Claimant was correctly assessed at a Level-1 (not impaired) as the Claimant’s speech was understandable and appropriate. Pursuant to ADW Policy, 1 LOC point could be awarded if the Claimant’s communication was Level-3 (understandable with aids), or 2 LOC points could be awarded if the Claimant was assessed at a Level-4 (inappropriate/none). The Claimant’s representatives contend that the content and appropriateness of the Claimant’s communication has been diminished by her dementia. RN Sickles noted in Exhibit D-2 that the Claimant was able to answer some of her questions, but a lot of information had to come from the homemaker and the Claimant’s sister because the Claimant was angry during the visit. A review of Exhibit D-2 reveals that the Claimant responded appropriately to several questions regarding orientation, vacating, and hearing. It is clear that the Claimant’s dementia is adversely affecting her ability to communicate, but the evidence indicates she is currently able to make her needs and wants known. Because she does not qualify at a Level-3 or Level-4, no additional LOC points can be awarded in the functional area of communication.

- 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 20 LOC points on a PAS assessment completed by WVMI in August 2011.
- 3) Evidence submitted at the hearing fails to demonstrate that the Claimant should have been awarded any additional LOC points.
- 4) In accordance with existing policy, an individual with 20 points qualifies for homemaker services at a Level "C" LOC. Pursuant to Medicaid ADW Program Policy, the Claimant is eligible to receive 4 hours per day / 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 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**