



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

December 7, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held December 6, 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, §§501.5.1.1(a) and 501.1.1(b).2.2)

Information submitted at the hearing reveals that you continue to require a level of care and services consistent with a Level "C" Level of Care (LOC) - 4 hours per day / 124 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 provided through 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] Moundsville, WV

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-2174

**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 December 6, 2011 on a timely appeal filed September 26, 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

-----, Claimant's Homemaker/Girlfriend

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 501.5.1.1(a) and 501.5.1.1(b)

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 501.5.1.1(a) and 501.5.1.1(b)
- D-2 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated 9/15/11
- D-2a Prescription Pad Note dated 11/28/11 from [REDACTED]
- D-2b Confirmed diagnoses provided by [REDACTED] on 9/16/11
- D-3 Notice of Decision dated 9/21/11

VII. FINDINGS OF FACT:

- 1) On September 15, 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 September 21, 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 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. Debra Lemasters, RN, West Virginia Medical Institute (WVMI), reviewed the PAS (D-2) and testified that the Claimant was awarded 16 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 contends that he should remain a LOC “C” as he should have been awarded additional points in the following areas of Exhibit D-2: (#23.h) 1 point for pain, (#26.h) 2 points for transferring (Level-3, 1-person assistance required) and (#26.j) 2 points for Wheeling (Level-3, 1-person situational assistance required).

The following will address each of the contested areas:

Pain (#23.h) – Debra Lemasters, RN, WVMI, testified that a point can only be awarded for pain if the individual has been given that diagnosis by a physician, or if he/she is taking a prescription medication to treat pain. The evidence submitted at the hearing fails to confirm a physician diagnosis and the clinical evidence, as well as testimony presented by the Claimant, confirms the Claimant is not being treated by prescription medication for pain. As a result, no additional LOC points can be assigned for pain.

Transferring (#26.h) – The evidence submitted at the hearing reveals that the Claimant is non-ambulatory, but he has limited use of his right leg. Information secured during the assessment by RN Lemasters indicates that the Claimant could shift his weight and pivot while maintaining balance on his wheelchair and couch to transfer. The Claimant was reportedly able to transfer in-and-out of bed and use the toilet in a similar fashion. The Claimant, however, also has limited use of his left arm and left hand due to contracture. The Claimant’s left hand is positioned in a partial fist position, cannot be opened or closed, and is flexed downward at the wrist. His left arm is bent at the elbow and has limited range of motion. Testimony presented by ----, Claimant’s homemaker, reveals that she routinely assists the Claimant with transfers, specifically in-and-out of bed. Moreover, it is documented in Exhibit D-2, page 8 of 9, that the Claimant requires assistance with transferring on and off the shower chair when bathing. Upon consideration of the evidence, the Claimant requires 1-person assistance with transferring (Level-3), and therefore qualifies for two (2) additional LOC points.

Wheeling (#26.j) – RN Lemasters documented that she was informed during the assessment that the Claimant can wheel independently in his manual wheelchair by using his right hand to move the wheel on the chair and he can push with his right foot. The Claimant testified that he sometimes requires situational assistance ambulating in his wheelchair because he can get stuck against the wall or doorway. While it is clear that the Claimant has some ability to manipulate his wheelchair, his inability to use his left leg and left hand (see information above) to assist with ambulation clearly supports his contention that he requires situational assistance with maneuvering his wheelchair in the home. Two (2) additional points are assigned to the Claimant’s LOC - wheeling is Level-3 - situational assistance is required.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.5.1.1(a) and 501.5.1.1(b): 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 16 LOC points on a PAS assessment completed by WVMI in September 2011.
- 3) Evidence submitted at the hearing demonstrates the Claimant should have been awarded 4 additional LOC points – 2 points for transferring (Level-3, 1-person assistance required) and 2 points for wheeling (Level-3, situational assistance required).
- 4) In accordance with existing policy, an individual with 20 points qualifies as 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 **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 December, 2011.

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