



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

Rocco S. Fucillo
Cabinet Secretary

July 13, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 12, 2012. 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, §§501.5.1.1(a) and 501.1.1(b).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 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
CWVAS, [REDACTED] WV

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1248

**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 telephonically on July 12, 2012, on a timely appeal filed April 27, 2012.

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

-----, RN, CWVAS, Claimant's witness

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

Teena Testa, RN, West Virginia Medical Institute (WVMI), Department witness

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 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, Sections 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 - Sections 501.5.1.1(a) and 501.5.1.1(b)
- D-2 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services - dated 3/12/12
- D-3 Notice of Decision - dated 3/19/12
- D-4 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services - dated 3/28/11

VII. FINDINGS OF FACT:

- 1) On March 12, 2012, the Claimant was medically assessed (D-2) to determine continued medical eligibility and assign an appropriate Level of Care (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 March 19, 2012, 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 notice provides for a reduction in her LOC to a Level "B" Level of Care (63 - 93 hours per month).
- 3) The Department, represented by Sarah Birkhead, RN, Bureau for Senior Services (BoSS), cited Medicaid policy and called its witness to review the medical findings on the Pre-Admission Screening (PAS) Form (D-2). Teena Testa, RN, West Virginia Medical Institute (WVMI), reviewed Exhibit D-2 and testified that the Claimant was awarded 15 points for documented medical conditions that require nursing services. The Department contended that pursuant to Medicaid policy, this finding is consistent with a LOC "B" (10-17 points), indicating the Claimant is eligible for 63 - 93 hours per month of homemaker services.

- 4) The Claimant contended that she should have been awarded three (3) additional LOC points: One (1) point for angina at rest (23.a), one (1) point for angina with exertion (23.b) and one (1) point for bladder incontinence (Level-3). The following will address each of the contested areas.

Angina – RN Testa testified that the Claimant did not present a diagnosis of angina and did not provide any medications to indicate she was being treated for angina on the date of the PAS. A review of Exhibit D-2, pages 2 and 3, confirms that the Claimant did not report taking any medication therapy for the treatment of angina – at rest or exertion – and there is no information to indicate a diagnosis was reported by her referring physician. The Claimant purported that she has been taking nitroglycerine for several years and that she must have forgotten to report that information. While Exhibit D-4 confirms the Claimant received two LOC points for angina (at rest and exertion) in the assessment completed the previous year, there is no evidence the Claimant reported this condition, or verified that she was taking prescription medication when her current PAS assessment was completed. Based on the evidence, the Claimant was correctly awarded zero (0) LOC points for angina [at rest or exertion].

Bladder Incontinence - The Claimant was assigned one (1) LOC point for occasional bladder incontinence; however, the Claimant contended that she should have been assessed as incontinent (Level-3), and therefore, awarded one (1) additional point. Testimony and documentation received at the hearing indicates the Claimant reported that she had not had any incontinent accidents since undergoing stem cell implants. While the Claimant testified that her condition has deteriorated, and that she is now incontinent of bladder, evidence reveals that the assessment completed in March 2012 accurately reflected her functional level at that time. As a result, no additional LOC points can be awarded.

- 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 0-62 hours per month

Level B - 10 points to 17 points 63-93 hours per month

Level C - 18 points to 25 points 94-124 hours per month

Level D - 26 points to 44 points 125-155 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 15 LOC points on a PAS assessment completed by WVMi in March 2012.
- 3) Evidence submitted at the hearing fails to demonstrate the Claimant should have been awarded any additional LOC points.
- 4) In accordance with existing policy, an individual with 15 points qualifies as a Level "B" LOC. As a result, the Claimant is eligible to receive 63 - 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 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 July 2012.

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