



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 10, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 5, 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 WVMH. (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
Right at Home

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1259

**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 5, 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

-----, Claimant's homemaker/witness

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

Brenda Myers, 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 3/26/12
- D-3 Notice of Decision - dated 4/2/12
- D-4 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services - dated 4/19/11

Claimant's Exhibits:

- C-1 Correspondence from the Claimant's physician – dated 6/13/12

VII. FINDINGS OF FACT:

- 1) On March 26, 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 April 2, 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 - 3 hours per day/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). Brenda Myers, RN, West Virginia Medical Institute (WVMI), reviewed the current PAS (D-2) and testified that the Claimant was awarded 16 points for documented medical conditions that require nursing services. The Department noted that the previous PAS (D-4), dated April 19, 2011, awarded the Claimant 20 Level of Care points, but the new PAS did not include diagnoses of angina (at rest and exertion), dysphasia,

or knee contracture. The Claimant's functional ability in all of her Activities of Daily Living (ADLs) remained unchanged from the previous PAS. 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 up to 3 hours per day/93 hours per month of homemaker services.

- 4) The Claimant contends that she should have been awarded two (2) additional points, as walking and transferring should have been assessed at a Level 3 (one-person physical assistance required). The Claimant purported that she has been experiencing dizziness and undergoing physical therapy three times a week due to poor balance. The Claimant and her witness purported that the Claimant's homemaker must follow along behind her when she walks in the event she loses her balance.

Walking – An individual can be awarded up to two (2) LOC points if they require hands-on physical assistance (Level 3 or higher) to walk. RN Myers testified that she observed the Claimant ambulate with a quad cane and noted that her gait was steady on the date of the assessment. It was further reported that the Claimant uses a "rollater walker" when she ambulates outside of her home. RN Myers purported that the Claimant was not receiving physical therapy in March 2012 when she completed her medical assessment, as this information would have been noted in the assessment. Evidence demonstrates that the Claimant was correctly assessed as a Level 2 (requires supervision/assistive device) in walking. As a result, no additional LOC points can be awarded.

Transferring - RN Myers cited Exhibit D-2, page 6, and noted that she observed the Claimant transfer from a seated position at the kitchen table by supporting herself with the table top. RN Myers further testified that the Claimant reported she was able to steady herself with furniture or her quad cane when transferring, and she uses a bar on the wall next to her toilet for assistance with transferring. Based on the evidence, the Claimant did not require one-person physical assistance with transferring when the medical assessment was completed. As a result, no additional LOC points can be awarded for transferring, as the Claimant was correctly assessed at a Level 2 (supervision/assistive device).

- 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

Personal Options Service Limits

Personal Options members have a monthly budget based on their Service Level. The Personal Options monthly budget can be used flexibly within the month but must be justified and documented on the approved Participant-Directed Service Plan/Spending Plan.

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 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 16 points qualifies as a Level "B" LOC. As a result, 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 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**