



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

September 7, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 6, 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 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 "D" Level of Care (LOC). As a result, you are eligible for 125-155 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 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/PPL

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES

BOARD OF REVIEW

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1614

**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 September 6, 2012, on a timely appeal filed June 8, 2012.

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 daughter/representative
- , Claimant’s care provider/witness
- Kay Ikerd, RN, Bureau of Senior Services (BoSS), Department representative
- Kim Sang, 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 5/30/12
- D-3 Notice of Decision - dated 6/5/12
- D-4 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services - dated 6/14/11
- D-5 Notice of Decision Level of Care Change – dated 10/17/11

Claimant's Exhibits:

- C-1 Correspondence from Dr. -----, MD, – dated 8/13/12 (received 8/20/12)
- C-2 "Claimant's writing of what she likes to eat" - received 8/20/12
- C-3 Written statement from ----- – received 8/20/12

VII. FINDINGS OF FACT:

- 1) On May 30, 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 while the Claimant's previous evaluation (D-4) resulted in a Level "C" LOC, the Claimant was receiving homemaker services at a Level "D" LOC due to an increase in hours approved on October 17, 2011 (D-5).
- 2) On or about June 5, 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 "C" - 94-124 hours per month (medical needs cannot exceed \$1,777.66).

- 3) The Department, represented by Kay Ikerd, RN, Bureau of Senior Services (BoSS), cited Medicaid policy and stipulated that the Claimant was awarded 25 points. The Department contended that pursuant to Medicaid policy, the current assignment of 25 LOC points is consistent with a LOC “C” (18-25 points), indicating the Claimant is eligible for up to 124 hours per month of homemaker services.
- 4) The Claimant’s representatives contended that the Claimant should have been awarded four (4) additional LOC points: (#26.c.) One (1) point for dyspnea, (23.d.) one (1) point for significant arthritis, (#24) one (1) point for decubitus, and (26.a.) one (1) additional point for eating Level-3).

Dyspnea and Significant Arthritis: Evidence received in regard to LOC points being awarded for dyspnea and significant arthritis reveals that points can only be awarded for these conditions (and all other conditions located under section 23 – Medical Conditions/Symptoms) if the individual presents a physician’s diagnosis and/or they are taking a prescription medication that has been prescribed to treat that specific condition. Kim Sang, RN, WVMI, testified that the Claimant and her daughter/representative (-----) denied the Claimant had shortness of breath, and a diagnosis of dyspnea was not included on the referral completed by the Claimant’s physician. RN Sang further testified that she requested verification of the arthritis diagnosis from the Claimant’s physician, but received no response. While there is information in Exhibit C-1 verifying a diagnosis of these conditions, this information was not available to RN Sang at the time of the assessment. As a result, no additional LOC points can be awarded for dyspnea and arthritis.

Decubitus: The Claimant’s representative noted that the Claimant often gets a rash and questioned whether or not that qualified as a decubitus. RN Sang testified that a decubitus is a pressure ulcer or bed sore resulting from continuous pressure on an area of the body that causes the skin to breakdown. A rash does not qualify, and therefore, does not merit the assignment of any LOC points.

Eating: The Claimant’s representative (-----) and her caregiver (-----) testified that the Claimant requires total care (Level-3) for eating. The Claimant was reported to have difficulty with her grasp, but more importantly, she is mentally unable to feed herself. ----- and ----- reported that the Claimant can pick up finger food, but then she loses concentration and will just hold it, or if prompted to take a bite, throw it. ----- testified that she has to keep the Claimant’s attention and place food in her mouth, or she will not eat. Additional documentation on the PAS reveals that the Claimant has a diagnosis of dementia and that she was totally disoriented (Level-3) on the date of the assessment. While the Claimant may have the physical ability to eat finger foods, she no longer has the mental capacity, and therefore, requires total care in the functional area of eating. One (1) additional LOC point is 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	69 - 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 25 LOC points on a PAS assessment completed by WVMi in May 2012.
- 3) Evidence submitted at the hearing demonstrates the Claimant should have been awarded one (1) additional LOC point in the functional area of eating.
- 4) In accordance with existing policy, an individual with 26 points qualifies as a Level "D" LOC. As a result, the Claimant is eligible to receive 125-155 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 September 2012.

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