



**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**

December 18, 2012

RE: ---- v. WV DHHR
ACTION NO.: 12-BOR-2203

Dear Ms. ----:

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

If you believe the decision was reached in error, you may appeal. See the attached explanation of Claimant's Recourse.

Sincerely,

State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Kay Ikerd, RN, BoSS
WVMI

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

IN RE: ----,

Claimant,

v.

ACTION NO.: 12-BOR-2203

**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 was originally scheduled to convene on November 14, 2012, but was continued at the request of the Department due to the illness of its witness. This hearing convened on December 18, 2012, on a timely appeal filed September 7, 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

----, Homemaker, ----, Claimant's witness/representative

----, Case Manager, ---- – Claimant's witness

----, RN, ---- – Claimant's witness

Kay Ikerd, RN, Bureau of Senior Services (BoSS), Department's representative

Kathy Gue, RN, West Virginia Medical Institute (WVMI), Department's 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 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 8/27/12
- D-3 Notice of Decision dated 8/29/12
- D-4 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated 9/29/11

VII. FINDINGS OF FACT:

- 1) On August 27, 2012, 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 (see Exhibit D-4).
- 2) On or about August 29, 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, and the amount of homemaker service hours remained at 124 hours per month (Level "C" LOC).
- 3) The Claimant's representatives contended that the August 27, 2012 medical assessment should have resulted in an increase to a Level "D" LOC due to the deterioration in the Claimant's health. Claimant's representatives contended that the Claimant suffered a stroke and a broken hip in July 2012, and that her needs cannot be met with a Level "C" LOC.

- 4) The Department cited Medicaid policy and called its witness to review the medical findings on the Pre-Admission Screening (PAS) form (D-2). Kathy Gue, RN, West Virginia Medical Institute (WVMI), reviewed the PAS and testified that the Claimant was awarded 25 points for documented medical conditions that require nursing services – this total includes one (1) additional point for pain (Section 26.h) that RN Gue acknowledged she failed to mark on the PAS.

The Department noted that the Claimant was awarded 19 points in the previous assessment (Exhibit D-4), and while the current medical assessment reflects a deterioration in the Claimant's health, pursuant to Medicaid policy, this finding is consistent with a LOC "C" (18-25 points), indicating the Claimant continues to be eligible for up to 124 hours per month of homemaker services.

- 5) The Claimant's representatives contended that the Claimant's LOC should have been increased to a LOC "D" following the August 2012 medical assessment, as she should have been awarded three (3) additional LOC points for total care (Level 3) in eating, bathing and dressing.

Testimony proffered at the hearing by ----, Claimant's homemaker and representative, confirms that the Claimant was correctly assessed at a Level 2 (requires physical assistance) in eating and dressing - the Claimant effectively participates in both of these functional areas. As a result, no additional LOC points can be awarded in the functional areas of eating or dressing.

Specific to the functional area of bathing, RN Gue testified that she determined the Claimant required physical assistance (Level 2) because it was reported that the Claimant can wash her private areas. However, Ms. ---- noted that while the Claimant does participate in bathing by washing her private areas – as documented by RN Gue – she (Ms. ----) must wash those areas again for the Claimant because she cannot adequately clean herself. Whereas Ms. ----'s testimony is credible, the Claimant was not effectively participating in bathing, and was demonstrating the need for total care (Level 3) at the time of the assessment. As a result, the Claimant is awarded one (1) additional LOC point in bathing.

- 6) 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 25 LOC points on a PAS assessment completed by WVMi in August 2012.
- 3) Evidence submitted at the hearing demonstrates the Claimant should have been awarded one (1) additional LOC point, as she requires total care (Level 3) in the functional area of bathing.
- 4) In accordance with existing policy, an individual with 26 points qualifies for a Level "D" LOC. Pursuant to Medicaid ADW Program Policy, the Claimant is eligible to receive up to 155 hours per month of homemaker services.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's finding that homemaker services should remain at a Level "C" LOC. The evidence demonstrates that the Claimant's homemaker service hours under the Medicaid Aged and Disabled Waiver Services Program should be increased to a Level "D" LOC - up to 155 hours per month – effective immediately.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ day of December 2012.

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