



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

February 21, 2012

-----for  
-----  
-----  
-----

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held February 14, 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 require a level of care and services consistent with a Level "C" Level of Care (LOC). Therefore, Personal Options Service Limits cannot exceed \$1,777.66 per month.

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  
Public Partnerships, LLC

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

**IN RE: -----,**

**Claimant,**

**v.**

**ACTION NO.: 11-BOR-2658**

**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 February 14, 2012 on a timely appeal filed December 1, 2011.

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  
-----, RN, CCIL, Claimant's witness  
-----, Public Partnerships, LLC, Claimant's witness  
-----, RN, Hospice Care, Claimant's witness  
-----, MSW, Hospice Care, Claimant's witness

Kay Ikerd, RN, Bureau of Senior Services (BoSS) – (participated telephonically)  
Debra Lemasters, RN, West Virginia Medical Institute (WVMI) – (participated telephonically)

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, 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 11/5/10
- D-3 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services - dated 10/20/11
- D-4 Notice of Decision dated 11/21/11
- D-5 Medicaid Aged & Disabled Waiver Program Medical Necessity Evaluation Request – 9/7/11

##### **Claimant's Exhibits:**

- C-1 Nurse Visit Note and Care Plan – 11/2/11

#### **VII. FINDINGS OF FACT:**

- 1) On October 20, 2011, the Claimant was medically assessed (D-3) 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 "D" LOC at the time of the reevaluation.
- 2) On or about November 21, 2011, the Claimant was notified via a Notice of Decision (D-4) that she continues to be medically eligible to participate in the ADW Program, however provides for a reduction in monthly budgeted homemaker services. As a matter of record, homemaker services were reduced to a Level "C" Level of Care - 4 hours per day/124 hours per month - (Monthly Personal Options Service Limits \$1,777.66 ).

- 3) The Department's representative, Kay Ikerd, RN, Bureau for Senior Services (BoSS), noted that the previous PAS dated 11/5/10 (D-2) awarded the Claimant 16 points (Level "B" LOC), but a request for additional homemaker service hours was approved in February 2011 resulting in a Level "D" LOC. The Department cited Medicaid policy and called its witness to review the medical findings on the Pre-Admission Screening (PAS) Form (D-3). Debra Lemasters, RN, West Virginia Medical Institute (WVMI), reviewed the PAS and testified that the Claimant was awarded 19 points for documented medical conditions that require nursing services (*this total included one additional point in section #23.e for paralysis that was erroneously unidentified on the PAS*). RN Lemasters further testified that she contacted the Claimant's physician to verify a report of shortness of breath (dyspnea), dysphagia and contractures, but because she did not receive diagnostic verification from the Claimant's physician, she was unable to award points in those areas. The Department contends that pursuant to Medicaid policy, this finding is consistent with a LOC "C" (18-25 points), indicating the Claimant is eligible for 4 hours per day or 124 hours per month of homemaker services through case management, or a Personal Options Service Limit amount of \$1,777.66 per month.
- 4) The Claimant's daughter and her representatives contend that the Claimant should remain a LOC "D." Testimony provided at the hearing reveals that while the Claimant was discharged from Hospice Care not long before the assessment, hospice services have been reinstated due to her failing health. The Claimant's representatives assert that the Claimant should have been awarded additional points in the following areas of Exhibit D-3: (23.c. dysphagia), (23.g. aphasia) (26.b. bathing, level-3), (26.c. dressing-level 3), (26.d. grooming, level 3), (26.f.-bowel incontinence, level 2), and (26.g. orientation, level 2 or 3).

The following will address each of the contested areas:

The Department's objection to Claimant's Exhibit C-1 was noted on the record, but this exhibit was accepted into evidence because it was submitted and received timely by RN Lemasters (see D-3, page 4 of 6). However, the physician's signature was not viewable on the copy presented to RN Lemasters, and a physician's signature on nursing notes cannot be recognized as a diagnostic finding. As a result, this evidence has no bearing on LOC points that require a physician's diagnosis, specifically the contested areas of **dysphagia** and **aphasia**).

The areas of **bathing**, **dressing** and **grooming** were questioned by ----- from Hospice Care at the conclusion of the hearing. ----- acknowledged that Hospice Care was not providing services at the time of the assessment, but indicated the Claimant was total care for bathing, dressing and grooming – both before the assessment and since hospice services have been reinstated. RN Lemasters testified that in order for an individual to be assessed as total care (level 3) in any of these functional areas, they must be unable to participate at any level in the specific activity of daily living (ADL). RN Lemasters cited her notation in Exhibit D-3, pages 7 and 8, and testified that the homemaker described how the Claimant participated in her bathing, dressing and grooming. While testimony provided on behalf of the Claimant indicates her functional ability has deteriorated, information provided to RN Lemasters by the Claimant's caregiver at the time of the assessment confirms the Claimant was correctly assessed at a level 2 (physical assistance only) in bathing, dressing and grooming. As a result, the Claimant was

appropriately awarded 1 LOC point in each of these areas – no additional LOC points can be awarded.

**Bowel Incontinence** – Policy requires that episodes of incontinence must occur three (3) or more times per week to be considered occasional (level-2) and be awarded a point toward the individual's LOC. The Claimant's representatives contend that the Claimant is incontinent of bowel and cited Exhibit C-1 (Nurse Visit Note and Care Plan) that indicates in section #8 "diarrhea, incontinent @ times." *Exhibit C-1 was considered for this contested area, as a physician's diagnosis is not required.* However, according to testimony and documentation cited by RN Lemasters, bowel incontinence was denied at the time of the assessment by those present (Exhibit D-3, page 1-9 indicates -----and -----, the Claimant's homemaker) and the information in Exhibit C-1 fails to indicate the frequency of incontinent episodes. Based on the evidence, no additional LOC points can be awarded for bowel incontinence.

**Orientation** – -----, RN, testified that the Claimant she has been disoriented to the day and month since she has known her. She acknowledged that Claimant knows who she is and where she is, but believes the Claimant has been disorientated to time since she first assessed her in August 2011. Testimony proffered by -----, RN, Hospice Care, reveals that the Claimant's orientation has deteriorated and that she is almost incapable of communicating or retaining information. Testimony provided by RN Lemasters reveals, however, that when an assessment is conducted for orientation of time, the individual is evaluated to see if they are aware of day or night. Whether or not an individual knows the day or month is memory-based, and because the Claimant has a diagnosis of multi-infarct (CVA), memory could be affected. Pursuant to policy, if the individual is alert to person and place, a finding of intermittent or total disorientation is not appropriate. While testimony presented at the hearing indicates the Claimant's orientation has deteriorated since the assessment, there is insufficient evidence to indicate the assessed level in October 2011 was incorrect. 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- 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 19 LOC points on a PAS assessment completed by WVMi in October 2011.
- 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 19 points qualifies as a Level "C" LOC. Pursuant to Medicaid ADW Program Policy, the Claimant is eligible to receive a monthly budget of \$1,777.66 for ADW 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 February, 2012.**

---

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