



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

April 26, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held April 24, 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 you continue to require a level of care and services consistent with a Level "C" Level of Care (LOC) - 4 hours per day/124 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 / WVM  
CCIL, Morgantown, WV

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

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

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-829**

**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 via telephone conference call on April 24, 2012 on a timely appeal filed February 22, 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  
Kay Ikerd, RN, Bureau of Senior Services (BoSS)  
Debbie Sickles, RN, West Virginia Medical Institute (WVMI)

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 2/8/12
- D-3 Notice of Decision dated 2/9/12
- D-4 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated 3/24/11

**VII. FINDINGS OF FACT:**

- 1) On February 8, 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.
- 2) On or about February 9, 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 amount of homemaker service hours was reduced to 93 hours per month (Level "B" LOC).
- 3) The Department's representative, Kay Ikerd, RN, Bureau of Senior Services (BoSS) cited Medicaid policy and entered Exhibits D-1 through D-4 into evidence. The Department noted that the Claimant was awarded 18 LOC points on the PAS completed in March 2011 (D-4), but was only awarded 17 LOC points on the PAS completed in February 2012 (D-2). In comparison, one point had been awarded on the March 2011 PAS in the area of Medication Administration (#28).
- 4) A review of Exhibit D-2 reveals that while the Claimant can administer insulin to herself, she requires assistance from her son to draw insulin into the syringe. A policy clarification read into the record by the Department's representative confirms that this level of assistance qualifies as "prompting and supervision," and therefore, 1 additional LOC point was awarded. The Claimant's cumulative LOC points total 18.

- 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

### **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 17 LOC points on a PAS assessment completed by WVMi in February 2012.
- 3) Evidence reviewed at the hearing demonstrates the Claimant should have been awarded 1 additional LOC point – 1 point for Medication Administration – as the Claimant requires “prompting and supervision.”
- 4) In accordance with existing policy, an individual with 18 points qualifies as a Level “C” LOC. Pursuant to Medicaid ADW Program Policy, the Claimant continues to be eligible to receive up to 4 hours per day/124 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 April, 2012.**

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