



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

May 10, 2012

Dear ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held May 9, 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 "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/WVMI
CWVAS, [REDACTED] WV

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

IN RE: ----,

Claimant,

v.

ACTION NO.: 12-BOR-992

**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 May 9, 2012 on a timely appeal filed March 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

----, CM, CWVAS

Kay Ikerd, RN, Bureau of Senior Services (BoSS)

Angie Hill, 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, 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 3/1/12
- D-3 Notice of Decision dated 3/7/12
- D-4 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated 3/17/11

VII. FINDINGS OF FACT:

- 1) On March 1, 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 March 7, 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 cited Medicaid policy and called its witness to review the medical findings on the Pre-Admission Screening (PAS) Form. Angie Hill, RN, West Virginia Medical Institute (WVMI), reviewed the PAS (D-2) and testified that the Claimant was awarded 17 points for documented medical conditions that require nursing services. The Department contends that pursuant to Medicaid policy, this finding is consistent with a LOC "B" (10-17 points), indicating the Claimant is eligible for 3 hours per day or 93 hours per month of homemaker services.

The Department noted that the Claimant was awarded three (3) fewer points on the current medical assessment (in comparison to D-4) as the Claimant did not have a decubitus (#24), she is able to administer her own medications (#25), and she did not require physical assistance with walking.

- 4) The Claimant contends that she should remain a LOC “C” as she should have been awarded additional points in the following areas of Exhibit D-2: (#25) 1 point for medication administration - requires prompting and supervision, and (#26.i) 1 additional point for 1-person physical assistance required for walking.

The following will address each of the contested areas:

Medication Administration (#25) – The Claimant testified that she continues to require prompting and supervision with medication administration because she often forgets, or has to be reminded, to take her medications. RN Hill documented in Exhibit D-2 that the Claimant denied needing reminders to take her medications, but noted in her orientation assessment of the Claimant that she has some forgetfulness. Because the Claimant was awarded a point in this area in the previous assessment, and she continues to demonstrate difficulty with her memory, it is reasonable to conclude that the Claimant continues to require prompting and supervision in the area of medication administration. One additional LOC point is, therefore, established.

Walking – Evidence submitted at the hearing reveals that the Claimant was properly assessed at a Level 2 in walking (supervised/assistive device). While the Claimant proffered testimony to indicate she requires 1-person assistance in the morning due to back pain, she reported during the assessment that she did not require physical assistance with walking and demonstrated the ability to ambulate in her home with an assistive device. As a result, no additional LOC points can be awarded in the functional area of walking.

- 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 March 2012.
- 3) Evidence submitted at the hearing demonstrates the Claimant should have been awarded one (1) additional LOC point – the Claimant requires prompting and supervision with medication administration.
- 4) In accordance with existing policy, an individual with 18 points qualifies for a Level "C" LOC. Pursuant to Medicaid ADW Program Policy, the Claimant is eligible to receive 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 May 2012.

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