



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 11, 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 while you continue to be medically eligible for participation in the Aged and Disabled Waiver Program, your Level of Care should be reduced from a Level "C" to a Level "B." As a result, you are eligible to receive 3 hours per day/93 hours per month of homemaker services.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to reduce your homemaker service hours under 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
Allied Nursing and Community Services

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

-----,

Claimant,

v.

ACTION NO.: 12-BOR-993

**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 20, 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's daughter/POA

-----, Claimant's son-in-law

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

Brenda Myers, 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)
Medicaid Provider Manual, Chapter 514 (Nursing Facility Services), Attachment 1 (Pre-Admission Screening Form)

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 February 29, 2012
- D-3 Notice of Decision dated March 8, 2012
- D-4 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated February 4, 2011

VII. FINDINGS OF FACT:

- 1) On February 29, 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 8, 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. The Department noted that the Claimant was medically assessed in February 2011 (D-4) and was determined to be a LOC "C" due to a finding of 18 LOC points. Brenda Myers, RN, West Virginia Medical Institute (WVMI), reviewed the current PAS (D-2) and testified that the Claimant was awarded 15 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 one (1) point on the current PAS in section #23.g. (Aphasia) that she did not receive in the previous assessment (D-4), and she did not qualify for four (4) points she received previously in dressing, bowel and bladder incontinence, and transferring.

- 4) The Claimant's representatives contend that the Claimant should remain a LOC "C" as she should have been awarded LOC points for (23.f.) dysphagia, dressing (Level-2, physical assistance), bowel and bladder incontinence (Level-2, occasional incontinence) and transferring (Level-3, 1-person physical assistance).

Dysphagia - Testimony proffered by Brenda Myers, RN, WVMI, reveals that LOC points can only be awarded in section #23 (Medical Conditions/Symptoms) if the individual presents a diagnosis by their physician, or they are taking a prescription medication to treat the condition. While the Claimant's representatives provided testimony to indicate the Claimant is experiencing some difficulty swallowing her medications, there is no evidence to support the assignment of LOC points for dysphagia.

Dressing – Information included in Exhibit D-2 reveals that the Claimant and her daughter reported that the Claimant is physically able to complete all tasks required to dress independently. It was reported that the Claimant requires prompting to change her clothing and some days she stays in her pajamas by choice. The Claimant's son-in-law testified that while the Claimant is physically able to dress, she is becoming more combative. He contends that he has to bribe and manipulate her more than ever to get her to dress. This, however, qualifies as prompting and supervision, as no physical assistance is required to assist the Claimant with dressing. As a result, no additional LOC points can be awarded in the functional area of dressing.

Incontinence (bowel and bladder) – The Medicaid Provider Manual, Chapter 514 (Nursing Facility Services), Attachment 1 (Pre-Admission Screening Form), provides the following levels of incontinence (Section 26.e and 26.f.):

Level-1 Continent

Level-2 Occasional Incontinence, less than 3 times per week

Level-3 Incontinent

Level-4 Colostomy

RN Myers purported the Claimant's daughter denied that the Claimant experiences episodes of bowel or bladder incontinence, and denied the use of any incontinent supplies. While the Claimant's son-in-law reported that inaccurate information was provided to keep his mother-in-law from being upset, he contends that she has occasional accidents of bowel and bladder incontinence. The evidence, however, fails to demonstrate that the medical assessment completed by RN Myers was inaccurate. Based on the information known at the time of the assessment, no additional LOC points can be awarded for incontinence (bowel or bladder).

Transferring – The Claimant was assessed at a Level-3 (1-person physical assistance) in February 2011 and received two (2) LOC points in the functional area of transferring. RN Myers purported that the nurse who completed the 2011 assessment assigned the Claimant a Level-3 because the Claimant lost her balance and fell back into a chair while demonstrating transferring. However, according to the transferring notes in Exhibit D-4, the Claimant successfully transferred while pushing off the armchair and did not demonstrate the need for physical assistance. RN Myers reported that the documentation in the previous assessment is consistent with the information in her assessment, and confirms the Claimant can transfer by pushing off the furniture or mattress, and she has an elevated toilet seat for transferring off the commode. The Claimant’s son-in-law testified that the Claimant sometimes requires assistance transferring out of bed in the morning due to stiffness, however, this information was not reported during the assessment. Upon consideration of the information provided to RN Myers during the assessment, and the findings documented in the 2011 PAS, the Claimant was correctly assessed at a Level-2 in transferring – 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

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 15 LOC points on a PAS assessment completed by WVMi in February 2012.
- 3) Evidence submitted at the hearing fails to demonstrate that the Claimant should have been awarded any additional LOC points.
- 4) In accordance with existing policy, an individual with 15 points qualifies for a Level "B" LOC. Pursuant to Medicaid ADW Program Policy, the Claimant is eligible to receive 3 hours per day/93 hours per month of homemaker 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 May, 2012.

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