



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 21, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 31, 2009. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker service hours under the Aged/Disabled (HCB) Title XIX 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, §§501.3.2.1 & 501.3.2.2)

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 "D" to a level "C" Level of Care. As a result, you are eligible to receive 4 hours per day / 124 hours per month of homemaker services.

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to reduce your homemaker service hours under the Medicaid Title XIX (HCB) Waiver Services Program.

Sincerely,

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

Pc: Erika H. Young, Chairman, Board of Review
BoSS
PPL
WVMI

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

-----,

Claimant,

v.

Action Number: 09-BOR-1082

**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 concluded on August 21, 2009 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 June 11, 2009 but was rescheduled due to a power outage and convened on July 31, 2009 on a timely appeal filed March 10, 2009.

It should be noted that the Claimant's 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

Angel Khosa, LSW, BoSS (Participated telephonically)

Debra LeMasters, RN, WVMI (Participated telephonically)

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether or not the Department was correct in its proposal to reduce the Claimant homemaker services hours (LOC) provided through the Medicaid Aged and Disabled Waiver Program.

V. APPLICABLE POLICY:

Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, Section 501.3.2.1 & 501.3.2.2

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 501.3.2.1 & 501.3.2.2
- D-2 Pre-Admission Screening for Aged/Disabled Waiver Services (PAS) dated February 24, 2009
- D-3 Medical Necessity Evaluation Request completed by the Claimant's physician on January 7, 2009
- D-4 Notice of Decision dated March 2, 2009

Claimant's Exhibits:

- C-1 Progress Note Report for ----- updated 5/29/09

VII. FINDINGS OF FACT:

- 1) On March 26, 2009, 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). 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 March 2, 2009, the Claimant was notified via a Notice of Decision (D-4) that he continues to be medically eligible to participate in the ADW Program, however, the amount of homemaker service hours were reduced to 124 hours per month (Level "C" LOC).
- 3) The Department cited Medicaid policy and called its witness to review the medical findings on the Pre-Admission Screening (PAS) Form. The WVMI RN reviewed the PAS (D-2) and testified that the Claimant was awarded 19 points for documented medical conditions that require nursing services. Pursuant to Medicaid policy, this finding is consistent with a LOC "C" (18-25 points), which makes the Claimant eligible for 4 hours per day or 124 hours per month of homemaker services.

4) The Claimant indicated that he cannot understand how he could have been established at a level “D” LOC last year, and then a level “C” LOC this year. He believes his health and functional abilities have deteriorated. The Claimant, however, contested the medical findings in only three (3) areas - Right side paralysis, dyspnea and arthritis – Pursuant to policy guidelines, even if these points are awarded, the Claimant’s point total would not be sufficient to establish the need for a LOC “D” (a minimum of 26 points must be assigned). As a result, the Claimant’s argument to remain at a level “D” LOC is moot.

5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2.1 and 501.3.2.2: 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/Disabled Waiver Program is determined by the number of points awarded on the PAS assessment tool.

2) The Claimant received 19 points on a PAS assessment completed by WVMI on February 24, 2009.

- 3) There were only three (3) potential points contested by the Claimant, and even if awarded, the Claimant's point total would not reach the 26 points required to establish the need for a level "D" LOC.
- 4) In accordance with existing policy, an individual with 18-25 points qualifies as a level "C" LOC and is therefore eligible to receive 4 hours per day or 124 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 Aged/Disabled, Title XIX (HCB), Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ of August, 2009.

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