



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 6, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 9, 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 you continue to require the level of care and services consistent with a level "C" Level of Care (LOC).

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department 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
CCIL
WVMI

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

-----,

Claimant,

v.

Action Number: 08-BOR-2395

**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 July 1, 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 March 19, 2009 but was rescheduled at the request of the Claimant and convened on Jun 9, 2009 on a timely appeal filed November 3, 2008.

It should be noted that the Claimant's 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, CCIL
-----, Homemaker RN, WV Choice
Kay Ikerd, RN, BoSS
Debra LeMasters, RN, WVMi

* All parties 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 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 10/17/08
- D-3 Notice of Decision dated October 22, 2008

Claimant's Exhibits:

- C-1 Correspondence from Dr. -----, MD, Hospice Care – dated 11/21/08

VII. FINDINGS OF FACT:

- 1) On October 17, 2008, 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 "C" LOC at the time of the reevaluation.
- 2) On or about October 22, 2008, the Claimant was notified via a Notice of Decision (D-3) that he continues to be medically eligible for participation in the ADW Program, however, the amount of homemaker service hours were reduced to 93 hours per month (Level "B" LOC).
- 3) The Department reviewed Medicaid policy and called its witness to review the medical findings on the Pre-Admission Screening (PAS) Form completed on October 17, 2008. The WVMi RN reviewed the PAS form (D-2) and testified that two additional points were added upon receipt of information from Dr. [REDACTED] confirming a diagnosis of Arthritis and Dysphagia. The WVMi RN testified that a PAS dated October 24, 2008 includes these findings and that the Claimant was ultimately awarded 17 points for documented medical conditions that require nursing services. She testified that this finding (17 points) is consistent with a LOC "B" (10-17 points) making the Claimant eligible for 3 hours per day or 93 hours per month of homemaker services.

- 4) The Claimant and his representatives contends that he should remain a LOC “C” as he should have been awarded addition points in the following areas: Orientation (level-2), Incontinence of Bowel and Bladder (level-2 in each area), and Medication Administration (prompting and supervision). Pursuant to Medicaid policy, one (1) additional point must be identified in order for the Claimant to remain a Level “C” LOC.
- 5) Medication Administration – The Claimant contends that he requires prompting and supervision for medication administration. Individuals who provide him care through Hospice make sure that his medications are correct in his weekly pill planner. Consistent with testimony provided at the hearing, the WVMi RN noted on page 10 of Exhibit D-2 that Hospice Nurses must check the Claimant’s pill planner to insure he is taking medication correctly. Although limited, this clearly qualifies as supervision and confirms that one additional point (+1) will be awarded in the area of medication administration. Because the Claimant only needed one additional point to remain a LOC “C,” the contested areas of orientation and incontinence will not be explored in this decision.
- 6) 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 17 points on a PAS completed by WVMi in October 2008.
- 3) As a result of the evidence presented at the hearing, one additional point is awarded in the area of Medication Administration (Prompting and Supervision).
- 4) In accordance with existing policy, an individual with 18 points qualifies as a level "C" LOC and is therefore 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 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 6th Day of July, 2009.

Thomas E. Arnett
State Hearing Officer