



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 8, 2011

-----for

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 5, 2011. 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 "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 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 / WVMI
[REDACTED] of WV

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

-----,

Claimant,

v.

Action Number: 11-BOR-640

**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 on April 5, 2011 on a timely appeal filed January 20, 2011.

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

-----, Claimant's Daughter / Representative

-----, Claimant's Husband

-----, Director, [REDACTED]

-----, Claimant's Homemaker, [REDACTED]

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

Debra Lemasters, RN, West Virginia Medical Institute (WVMI) (Participated telephonically)

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 Services (ADW) Program.

V. APPLICABLE POLICY:

Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, Section 501.3.2.1 and 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 and 501.3.2.2
- D-2 Pre-Admission Screening for Aged/Disabled Waiver Services (PAS) dated 12/20/10
- D-3 Notice of Decision dated 12/21/10

Claimant's Exhibits:

- C-1 Correspondence from [REDACTED] dated 3/23/11 that includes a letter from [REDACTED] M.D. (1/21/11) and a prescription pad note from Dr. [REDACTED] dated 3/11/11.

VII. FINDINGS OF FACT:

- 1) On December 20, 2010, 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 December 21, 2010, 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 were reduced to 93 hours per month (Level "B" LOC).
- 3) The Department's representative cited Medicaid policy and called its witness to review the medical findings on the Pre-Admission Screening (PAS) Form. Debra Lemasters, RN, West Virginia Medical Institute (WVMI), reviewed the 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.

- 4) The Claimant and her representatives contend that the Claimant should have been awarded one additional point in each of the following areas of Exhibit D-2: (**#23.e.**) Paralysis, (**#26.f.**) Bowel Incontinence, and (**#34**) Dementia. The Department noted that points can only be awarded in section #23 if the individual has a current diagnosis of the condition provided by a physician and/or taking prescription medications to treat that condition. The following will address each of the contested areas:

Paralysis (#23.e.) – Debra Lemasters, RN, testified she was unable to award a point for paralysis as this diagnosis can only be made by a physician. RN Lemasters testified that she sent a request to the Claimant’s physician and asked for diagnostic verification of left hemiparesis, however, the Claimant’s physician failed to respond. The Claimant’s representatives acknowledged that Dr. [REDACTED] failed to respond but indicated she was out of town. While Exhibit C-1 was accepted into evidence, the fact remains that verification of a paralysis diagnosis was not available to RN Lemasters at the time of the assessment. Based on the evidence, a LOC point cannot be added for paralysis.

Bowel Incontinence (#26.f.) – The Claimant’s representatives purported that the Claimant experiences episodes of bowel incontinence when she suffers a seizure. Testimony proffered by the Claimant’s representatives indicated they could not remember if bowel incontinence was fully explored during the assessment by RN Lemasters. The facts of this case, however, indicate that incontinence was addressed - 2 points were awarded for bladder incontinence – and according to RN Lemasters’ testimony, which is supported by documentation in Exhibit D-2, the Claimant was accompanied by four (4) individuals and everyone agreed that bowel incontinence was not an issue. The Claimant’s contention that LOC points should have been awarded due to an oversight by the evaluating nurse is without merit.

Dementia (#34) – The Claimant’s representatives noted that the Claimant suffered a cerebrovascular accident (CVA), more commonly known as a stroke, and as a result, she suffers from Dementia. While a CVA was included among the medical information provided by the Claimant’s physician, and it is noted in Exhibit D-2, there is no diagnosis of Dementia included with the Claimant’s medical information. In the absence of a physician diagnosis, a LOC point cannot be awarded for Dementia.

- 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 was awarded 15 points on a PAS assessment completed by WVMI in December 2010.
- 3) Evidence submitted at the hearing fails to demonstrate the Claimant should have been awarded any additional points at the time of the assessment.
- 4) In accordance with existing policy, an individual with 15 points qualifies as 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/Disabled, Title XIX (HCB), 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, 2011.

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