



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

Rocco S. Fucillo  
Cabinet Secretary

July 13, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 12, 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 "D" Level of Care (LOC). As a result, you are eligible for 125 - 155 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/CCIL, -----, WV

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

**IN RE: -----,**

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-1116**

**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 July 12, 2012, on a timely appeal filed April 18, 2012.

It should be noted that the Claimant's Medicaid ADW Program 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:**

-----, MPOA, Claimant's daughter/representative

-----, Claimant's daughter/witness

██████████ CM, CCIL

██████████ RN, WV Choice

Sarah Birkhead, RN, Bureau of Senior Services (BoSS), Department representative

Connie Sankoff, RN, West Virginia Medical Institute (WVMI), Department witness

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 4/10/12
- D-3 Notice of Decision - dated 4/12/12
- D-4 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services - dated 1/12/11

**Claimant's Exhibits:**

- C-1 Correspondence from -----, D.O., – dated 4/23/12 and 7/11/12

**VII. FINDINGS OF FACT:**

- 1) On April 10, 2012, the Claimant was medically assessed (D-2) to determine continued medical eligibility and assign an appropriate Level of Care (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 "D" LOC at the time of the reevaluation.
- 2) On or about April 12, 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 notice provides for a reduction in her LOC to a Level "C" Level of Care - 4 hours per day/124 hours per month.

- 3) The Department, represented by Sarah Birkhead, RN, Bureau for Senior Services (BoSS), cited Medicaid policy and called its witness to review the medical findings on the Pre-Admission Screening (PAS) Form (D-2). Connie Sankoff, RN, West Virginia Medical Institute (WVMI), reviewed the current PAS (D-2) and testified that the Claimant was awarded 25 points for documented medical conditions that require nursing services. The Department noted that the previous PAS (D-4), dated January 12, 2011, awarded the Claimant 22 LOC points (Level “C” LOC), but indicated the Claimant was granted additional homemaker hours following a request for an increase. The Department contended that pursuant to Medicaid policy, the current assignment of 25 LOC points is consistent with a LOC “C” (18-25 points), indicating the Claimant is eligible for up to 4 hours per day/124 hours per month of homemaker services.
- 4) The Claimant’s representatives contended that the Claimant should have been awarded three (3) additional LOC points: (#26.b.) One (1) point for bathing - should be total care (Level-3), (26.c.) One (1) point for dressing - should be total care (Level-3), and (26.m.) two (2) points for communication – should be Level-4 (inappropriate/none).

**Bathing** – The Claimant was assessed at a Level-2 (requires physical assistance) with bathing and awarded one (1) LOC point. Connie Sankoff, RN, WVMI, purported that she assessed the Claimant at this level because the Claimant demonstrated the ability to wash her arm and she wiped her face several times with a paper towel during the assessment. According to testimony provided by the Claimant’s representatives, the Claimant habitually wipes her face with a paper towel, and while she may have the physical ability to run a washcloth over her arm, she cannot effectively wash herself due to her mental status. Testimony received at the hearing reveals that the Claimant’s efforts to assist in bathing are ineffective, and therefore, she requires total care (Level-3) in bathing. Based on the evidence, one (1) additional LOC point is awarded in the functional area of bathing.

The contested areas of dressing and communication are moot, as the Claimant required only one (1) LOC point to be granted the relief sought from the appeal.

- 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	0 - 62 hours per month
Level B - 10 points to 17 points	69 - 93 hours per month
Level C - 18 points to 25 points	94 - 124 hours per month
Level D - 26 points to 44 points	125 - 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 25 LOC points on a PAS assessment completed by WVMi in April 2012.
- 3) Evidence submitted at the hearing demonstrates the Claimant should have been awarded no less than one (1) additional LOC point in the functional area of bathing.
- 4) In accordance with existing policy, an individual with 26 points qualifies as a Level "D" LOC. As a result, the Claimant is eligible to receive 125-155 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 July 2012.**

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