



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

November 21, 2012

Dear Ms. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 14, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker service hours provided through 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 "C" Level of Care (LOC). You continue to be eligible to receive up to 124 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 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
----, ----, WV

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

IN RE: ----,

Claimant,

v.

ACTION NO.: 12-BOR-2198

**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 November 14, 2012 on a timely appeal filed September 4, 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

----, Claimant's daughter/homemaker

----, RN, ----

----, Case Manager (CM), ---- (----)

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

Melissa Bell, 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, Section 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 - Section 501.5.1.1(a) and 501.5.1.1(b)
- D-2 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated 8/8/12
- D-3 Notice of Decision dated 8/10/12
- D-4 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated 5/10/11

VII. FINDINGS OF FACT:

- 1) On August 8, 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 resulting from the findings in Exhibit D-4.
- 2) On or about August 10, 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. Melissa Bell, RN, West Virginia Medical Institute (WVMI), reviewed the PAS assessment (D-2) and testified that the Claimant was awarded 17 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 to receive up to 93 hours per month of homemaker services.
- 4) The Claimant contends that she should remain a LOC "C" as she should have been awarded 2 additional LOC points in Section #26(k), as her vision is impaired/not correctable.

RN Bell testified that the Claimant's vision was assessed at a Level 2 (impaired/correctable), however, she indicated during her testimony that perhaps she should have rated vision a Level 3 (impaired/not correctable), as her documentation states Exhibit D-2, page 8 of 8 – "Member wears glasses, member reports she recently had cataract surgery and is still unable to see to read." Department's representative interjected and noted that because this is a functional assessment of the individual's ability in her home, pursuant to Attachment 14 in Chapter 501 of the Medicaid Provider Manual, the individual would have to be blind in order to be assessed a Level 3. Attachment 14 was not located in ADW policy, however, Chapter 514, Attachment 1, is the same PAS document used for nursing facility and ADW program eligibility. This document does not indicate that an individual must be blind to qualify at a Level 3.

The Claimant's vision was clearly impaired/not correctable, as she was unable to read even with the assistance of her glasses. An individual's inability to read clearly impairs functionality – selecting the correct medication, following dosage requirements, reading warning labels, etc... Based on the evidence, the Claimant's vision qualifies at a Level-3. As a result, two (2) additional LOC points are 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 a 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- 62 hours per month
- Level B - 10 points to 17 points- 93 hours per month
- Level C - 18 points to 25 points- 124 hours per month
- Level D - 26 points to 44 points- 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 17 LOC points on a PAS assessment completed by WVMi in August 2012.
- 3) Evidence submitted at the hearing demonstrates the Claimant should have been awarded 2 additional LOC points, as her vision is impaired/not correctable.
- 4) In accordance with existing policy, an individual with 19 points qualifies as a Level "C" LOC. Pursuant to Medicaid ADW Program Policy, the Claimant is eligible to receive up to 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 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 November 2012.

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