



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 26, 2012

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Dear Ms. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 20, 2012. Your hearing request was based on the Department of Health and Human Resources' determination that your homemaker service hours provided through the Medicaid Aged and Disabled Waiver Services Program should not be increased.

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 "B" Level of Care (LOC). Therefore, Personal Options Service Limits cannot exceed \$1,379.62 per month.

It is the decision of the State Hearing Officer to **uphold** the Department's determination that your homemaker service hours provided through the Medicaid Aged and Disabled Waiver Services Program should remain unchanged.

Sincerely,

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

Pc: Erika H. Young, Chairman, Board of Review  
BoSS/WVMI/----, LLC

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

## **BOARD OF REVIEW**

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

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-2242**

**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 20, 2012, on a timely appeal filed September 4, 2012.

#### **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 Homemaker

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

Debra Lemasters, 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 decision to determine the Claimant's homemaker service hours provided through the Medicaid Aged and Disabled Waiver (ADW) Services Program should remain unchanged at a LOC "B."

**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)

**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 8/16/12
- D-3 Notice of Decision dated 8/21/12
- D-4 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated 8/22/11

**VII. FINDINGS OF FACT:**

- 1) On August 16, 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 "B" LOC at the time of the reevaluation pursuant to the findings in Exhibit D-4.
- 2) On or about August 21, 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, and that her LOC is unchanged – Homemaker Services were determined to be consistent with a Level "B" Level of Care – approved for up to 93 hours per month/Monthly Personal Options Service Limits in the amount of \$1,379.62.
- 3) The Department's representative, Kay Ikerd, 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). Debra Lemasters, RN, West Virginia Medical Institute (WVMI), reviewed the PAS and testified that the Claimant was awarded 14 points for documented medical conditions that require nursing services. RN Lemasters noted that the Claimant received only 13 points in the assessment completed the previous year (D-4). The Department contends that pursuant to Medicaid policy, this finding demonstrates the Claimant's LOC continues to be consistent with a LOC "B" (10-17 points), indicating the Claimant is eligible for up to 93 hours per month of homemaker services through case management, or Personal Options Service Limits in the amount of \$1,379.62 per month.
- 4) The Claimant's representative/homemaker, ---, acknowledged that RN Lemasters assessment was correct according to policy, but contended that the policy only awards points for illnesses

the Claimant does not have. Ms. ---- noted that Claimant's lower back problems have deteriorated since the evaluation and that she, as her homemaker, should be allotted more time to provide the care the Claimant needs.

- 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- 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

#### **Personal Options Service Limits**

Personal Options members have a monthly budget based on their Service Level. The Personal Options monthly budget can be used flexibly within the month but must be justified and documented on the approved Participant-Directed Service Plan/Spending Plan.

### **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 14 LOC points on a PAS assessment completed by WVMi in August 2012.
- 3) Evidence submitted at the hearing fails to demonstrate the Claimant should have been awarded any additional LOC points resulting from the August 2012 evaluation.
- 4) In accordance with existing policy, an individual with 14 points qualifies as a Level "B" LOC. Pursuant to Medicaid ADW Program Policy, the Claimant is eligible to receive a monthly budget of \$1,379.62 for ADW services.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Agency's determination that the Claimant's homemaker service hours provided the Medicaid Aged and Disabled Waiver Services Program remain unchanged.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_ day of November 2012.**

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