



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

December 5, 2012

---- for

----.

Dear Ms. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held December 4, 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 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 require a level of care 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 proposal 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/----

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

IN RE: ----,

Claimant,

v.

ACTION NO.: 12-BOR-2336

**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 December 4, 2012, on a timely appeal filed October 1, 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's daughter/representative
Kay Ikerd, RN, Bureau of Senior Services (BoSS) – Department's representative
Sarah "Betsy" Carpenter, RN, West Virginia Medical Institute (WVMI) – Department's 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 decision to propose a reduction in Claimant's homemaker service hours (LOC) 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)

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 9/7/12
- D-3 Notice of Decision dated 9/11/12
- D-4 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated 10/4/11

VII. FINDINGS OF FACT:

- 1) On September 7, 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 September 11, 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, her LOC was 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) Respondent'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). Betsy Carpenter, RN, West Virginia Medical Institute (WVMI), reviewed the PAS 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 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, ----, contended that her mother should have been awarded four (4) additional LOC points - #26.h. Transferring should be Level 3, #26.i. Walking should be Level 3, and #26.k. Vision should be Level 3 - as these points were awarded in the assessment completed the previous year (D-4) and her condition has not improved. The following will address the contested areas:

Walking – The Claimant was assessed in October 2011 (Exhibit D-4), as requiring physical assistance to walk (Level 3) and awarded two (2) LOC points. RN Carpenter testified that she determined the Claimant required physical assistance in October 2011 because it was reported the Claimant required physical assistance to navigate the steps inside of the home. However, RN Carpenter cited her documentation (Exhibit D-2, page 7 of 8) and purported that when she arrived for the assessment on September 7, 2012, the Claimant bent at the waist and secured a barking dog by the collar. RN Carpenter further reported the Claimant demonstrated an erect posture and a steady gait while ambulating in the home and noted that the Claimant walked up the inside steps to her bedroom to retrieve her prescriptions, and back down the steps without assistance. The Claimant's son-in-law was present during the assessment and indicated that the Claimant uses her cane "at times" to ambulate in the home. The Claimant's representative noted that the Claimant can navigate the inside steps without assistance, but it is unsafe. A review of the evidence reveals that the Claimant was correctly assessed at a Level 2 (requires supervision/assistive device) and awarded one (1) LOC point. As a result, an additional LOC point cannot be awarded in the functional area of walking.

Transferring – It was determined in the October 2011 assessment that the Claimant required physical assistance (Level 3) to transfer and was assigned two (2) LOC points. RN Carpenter indicated that a Level 3 was assigned in 2011 based only on the Claimant's reported abilities. RN Carpenter cited her documentation (Exhibit D-2, page 7 of 8) and noted that the Claimant has some modifications to assist with transferring - a raised toilet seat, a shower chair and grab bars in the bathroom – and it was reported by her son-in-law that she holds on to things at times, or uses her cane to transfer. RN Carpenter indicated that the Claimant was assigned a Level 2 (requires supervision/assistive device) because it was reported that the Claimant can transfer from the bed, toilet and furniture in the home independently and she observed the Claimant transferring independently during the assessment without difficulty. While the Claimant's representative disagreed with this finding, she did not present any circumstances wherein the Claimant requires physical assistance by at least one (1) person to transfer. The evidence demonstrates the Claimant was correctly assessed a Level 2 (supervision/assistive device), therefore, no additional LOC points can be awarded.

Vision – The Claimant's representative noted that the Claimant suffers from macular degeneration and this condition only gets worse over time. Claimant's representative contended that her mother was awarded two (2) points in the 2011 assessment (Level 3 – impaired/not correctable) and her vision is not better. Respondent's representative noted that a functional assessment only considers whether or not vision impairs the individual's functional ability in the home. RN Carpenter purported that the 2011 determination was again based only on the Claimant's reported abilities. However, because the Claimant demonstrated the ability to navigate in her home, locate her prescription bottles and read some of the wording off of the documentation reviewed during the assessment, the Claimant's vision is impaired, but correctable to the point she can function in her home. No additional LOC points can be awarded in the functional area of vision.

- 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 15 LOC points on a PAS assessment completed by WVMi in September 2012.

- 3) Evidence submitted at the hearing fails to demonstrate the Claimant should have been awarded any additional LOC points resulting from the September 2012 evaluation.
- 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 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 proposal to reduce the Claimant’s homemaker service hours provided 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 December 2012.

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