



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

October 22, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held on October 6, 2009. Your hearing request was based on the Department of Health and Human Resources' decision to reduce your homemaker's hours of care from a Level C to a Level B level of care.

In arriving at a decision, the State Hearings 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 and Disabled Waiver program is based on current policy and regulations. These regulations provide that 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 Waiver Policy and Procedures Manual § 501.3).

The information which was submitted at your hearing revealed that while you remain 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" Level of Care. 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 Hearings Officer to Uphold the proposal of the Department to reduce your homemaker service hours under Medicaid Title XIX, (HCB) Waiver Services Program.

Sincerely,

Eric L. Phillips
State Hearings Officer
Member, State Board of Review

cc: Board of Review
Kay Ikerd, BoSS

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

-----,

Claimant,

v.

Action Number: 09-BOR-1369

**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 concluded on October 22, 2009 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 was convened on October 6, 2009 on a timely appeal, filed April 28, 2009.

It should be noted here that the claimant's benefits under the Aged and Disabled program have been continued at the previous level.

II. PROGRAM PURPOSE:

The Program entitled the Aged and Disable Waiver program (ADW) is administered by the West Virginia Department of Health & Human Resources. 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 witness and daughter

-----, Claimant's witness and daughter

Kay Ikerd, RN, BoSS (participated telephonically)

Tammy Kessell, RN, WVMI (participated telephonically)

Presiding at the Hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether or not the Department correctly assessed a reduction in the Level of Care homemaker service hours for the Claimant from a Level “C” to a Level “B” Level of Care.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Waiver Policy Manual, chapter 501.3.2.1 and chapter 501.3.2.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department’s Exhibits:

- D-1 Aged and Disabled Home and Community Based Waiver Policy Manual, section 501.3.2.1-501.3.2.2
- D-2 Pre-Admission Screening Form dated February 24, 2009
- D-3 Potential Denial dated March 5, 2009
- D-4 Notice of Decision dated April 15, 2009

VII. FINDINGS OF FACT:

- 1) On February 24, 2009, the Claimant was medically assessed to determine her continued eligibility and to assign an appropriate Level of Care, hereinafter LOC, in participation with the Aged and Disabled Waiver (ADW) program. Prior to reevaluation, the Claimant was assessed at a Level “C” LOC under the program guidelines.
- 2) On April 15, 2009, the Claimant received a Notice of Decision, Exhibit D-4. This Exhibit noted that the Claimant had been determined medically eligible to continue to receive in-home services under program guidelines but her corresponding level of care would be reduced to ninety-three (93) hours per month (LOC “B” determination).
- 3) The West Virginia Medical Institute (WVMI) nurse completed Exhibit D-2, the Pre-Admission Screening form, as part of her medical assessment of the Claimant. The WVMI nurse testified that Claimant was awarded a total of sixteen (16) points during the evaluation. The Claimant was awarded the following points as part of the assessment:

- Dyspnea – 1 point
- Significant Arthritis – 1 point
- Dysphagia – 1 point
- Aphasia – 1 point

Pain – 1 point
Other – 1 Point (point awarded for diagnosis of Amyotrophic Lateral Sclerosis, ALS)
Vacating During an Emergency – 1 point
Eating – 1 point
Bathing – 1 point
Dressing – 1 point
Grooming – 1 point
Bladder Incontinence – 1 point
Transferring – 1 point
Communication – 2 points
Medication Administration – 1 point

According to Medicaid policy, the assessed points correspond with a LOC rating of Level B (10-17 points); in turn the Claimant is eligible to receive three (3) hours of homemaker services per day or ninety-three (93) hours of services per month.

- 4) Along with the Pre-Admission Screening is a physician statement, dated January 14, 2009 from Dr. [REDACTED]. The documentation indicates the Claimant's diagnosis as Amyotrophic Lateral Sclerosis (ALS). Questions at the end of the documentation ask the physician if the patient has a terminal prognosis. The physician completing the document marked the question no, but indicates "the condition is ultimately terminal."
- 5) The Claimant's daughters testified that their mother is a very independent person. They testified that since their mother's reevaluation she has lost more mobility in her arms and has become completely dependent in regards to washing her hair and personal hygiene. They acknowledge that she has the ability to do some daily activities but needs assistance to accomplish certain tasks. The Claimant's daughters contend that their mother has a suctioning device to remove phlegm from her throat and mouth. They testified that their mother needs to suppress her tongue in order to place suctioning device tubing in her mouth to eradicate excess phlegm. The Claimant's daughter is also her homemaker aide, she testified that her mother cannot utilize the device to remove the excess phlegm and she completes the task as part of her duties as her mother's aide. The Claimant's daughter further indicated that if this procedure is not performed correctly her mother would be unable to breathe. They further testified that their mother's condition is terminal and she will not improve unless a cure is discovered for the disease. Additional testimony from the Claimant's daughters related to areas in which the assessing nurse awarded a point value during the evaluation.
- 6) 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) Medicaid policy dictates that an individual's Level of Care (LOC) is determined by the number of points awarded on the Pre-Admission Screening (PAS) assessment tool.
- 2) The Claimant was awarded a total of 16 points as part of her PAS assessment completed by WVMI on February 24, 2009.
- 3) Testimony presented by the Claimant's daughters indicated that their mother has a terminal condition of Amyotrophic Lateral Sclerosis, ALS. This diagnosis was supported by documentation from her physician that her condition was ultimately terminal. This information was available to the assessing nurse at time of reevaluation and submitted as part of the PAS assessment. Policy stipulates that a point may be awarded during the determination if a patient's prognosis is terminal.

*The Claimant's physician indicates that her condition is ultimately terminal. This prognosis meets criteria as outlined in policy; therefore an additional point **can be** awarded as part of the PAS assessment.*

- 4) Testimony revealed that the Claimant requires a suctioning device to aide in her ability to breathe. It was derived from testimony provided during the hearing that the Claimant cannot properly perform the suctioning procedure without assistance from others. Policy stipulates that a point may be awarded for Professional and Technical Care needs but only if the individual is in need of continuous oxygen.

The Claimant's daughters testified that without the use of a suctioning device the Claimant would have the inability to breathe. Testimony revealed that the Claimant is unable to use this device independently and requires assistance to accomplish this task. Suctioning is listed on the assessment tool under Professional and Technical Care

*needs; however policy stipulates that a point may be awarded under this category in the event that the individual is in need of continuous oxygen. The only need under the Personal and Technical care needs section of the PAS for which a point may be awarded is for continuous oxygen, therefore a point **cannot** be awarded for suctioning.*

- 5) Testimony revealed deterioration in the Claimant's condition since the assessment of the PAS, dated February 24, 2009. Any testimony or evidence is limited to the April 2009 decision and any ruling is limited to the Claimant's condition at the time of assessment.
- 6) As a result of evidence presented at the hearing, one (1) additional point may be awarded in the area of prognosis. The Claimant was previously awarded sixteen (16) points as part of her February 24, 2009 assessment. Total points awarded to the Claimant stand at seventeen (17).
- 7) In accordance with existing policy, an individual with seventeen (17) points qualifies as a level "B" LOC and is therefore eligible to receive 3 hours per day or 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 from a Level "C" LOC to a Level "B" LOC under the Aged/Disabled, Title XIX (HCB) Waiver program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ day of October 2009.

Eric L. Phillips
State Hearing Officer