



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Joe Manchin III
Governor

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

September 15, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 25, 2009. Your hearing request was based on the Department of Health and Human Resources' decision to approve you for homemaker hours at a Level B care instead of Level C.

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/Disabled Waiver program is based on current policy and regulations. These regulations provide that 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 WVMH (Aged/Disabled Home and Community Based Waiver Policy and Procedures Manual § 501.3).

The information submitted at your hearing revealed that you meet the medical criteria required for Level C care.

It is the decision of the State Hearings Officer to **Reverse** the action of the Department to award homemaker hours as a Level B instead of Level C.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

cc: Board of Review
Bureau of Senior Services
Americare Management Services
West Virginia Medical Institute

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

-----,

Claimant,

v.

Action Number: 09-BOR-1494

**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 August 25, 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 August 25, 2009 on a timely appeal, filed June 19, 2009.

II. PROGRAM PURPOSE:

The Program entitled Aged/Disabled Waiver (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
-----, Witness for Claimant
-----, Witness for Claimant
-----, Witness for Claimant

Kay Ikerd, RN, Bureau of Senior Services

Christine Miller, RN, West Virginia Medical Institute

Presiding at the Hearing was Kristi Logan , State Hearing Officer and a member of the Board of Review.

All participants testified by phone.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether or not Claimant's homemaker hours were correctly rated at a Level C care.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Waiver Policy Manual § 501.3.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community Based Services Waiver Policy Manual § 501.3.2
- D-2 Pre-Admission Screening Form dated June 9, 2009
- D-3 Notification Letter dated June 11, 2009

Claimants' Exhibits:

- C-1 Diagnoses from Dr. [REDACTED] and Dr. [REDACTED]

VII. FINDINGS OF FACT:

- 1) Claimant had been receiving ADW services prior to her admission to a nursing facility. Claimant was in the nursing facility over 100 days which terminated her ADW services. Claimant was reevaluated for the ADW program on June 9, 2009. A Pre-Admission Screening Form (PAS) was completed by Christine Miller, RN of the West Virginia Medical Institute (WVMI) that date (D-2).

Claimant was awarded a total of 15 points on the PAS and was approved for Level B care. Claimant had previously been receiving hours at a Level C care and was dissatisfied with the reduction.

- 2) -----, Claimant's case manager with Americare Management Services, presented into evidence diagnoses of shortness of breath (dyspnea) and arthritis of knees and

right shoulder by Dr. [REDACTED] dated June 19, 2009. These diagnoses were faxed to WVMI on June 22, 2009 (C-1).

Ms. [REDACTED] also had a diagnosis of bladder incontinence for Claimant also from Dr. [REDACTED] dated July 24, 2009 (C-1). Ms. [REDACTED] testified that Claimant has been incontinent of the bladder since April 2008. She was admitted to the nursing home in December 2008 and has been using incontinent supplies since that time.

- 3) -----, Claimant's son, testified that Claimant was incontinent prior to her admission to the nursing home. She started using adult diapers in the nursing home which caused a Urinary Tract Infection (UTI). Claimant had to be catheterized due to complications resulting from the UTI.
- 4) Christine Miller, RN with WVMI testified to the PAS she completed in June 2009. Claimant had acatheter at the time of the assessment so she was unsure if she had questioned Claimant regarding bladder incontinence. Ms. Miller stated she usually asks if there is any leakage from the catheter but did not have anything in her notes other than a reference to Claimant's usage of incontinent supplies.
- 5) The Department conceded that Claimant should be awarded points for the diagnoses of arthritis and shortness of breath (dyspnea) as the diagnoses were submitted to WVMI within the allowable time frame.
- 6) Aged/Disabled Home and Community Based Waiver Policy Manual § 501.3.2.1 and 501.3.2.2 states:

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- Decubitis- 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) Policy dictates that an individual's Level of Care for the Aged/Disabled Waiver Program is determined by the number of points obtained on the PAS assessment tool. The Claimant was awarded 15 points as the result of a PAS completed by WVMI in June 2009.
- 2) Diagnoses of dyspnea and arthritis from a physician were submitted to WVMI within two (2) weeks of the date of the PAS. Claimant will be awarded two (2) points for these medical conditions.
- 3) Testimony provided indicated the issue of bladder incontinence was not fully explored at the assessment. Claimant was evaluated as a Level 4 for bladder incontinence due to her catheter which is one (1) point. However, credible testimony indicated Claimant has been incontinent well before the assessment and should have been rated a Level 3 for bladder incontinence which would give her two (2) points. Claimant will be awarded an additional point for continence.
- 4) With the addition of three (3) points for continence, arthritis and dyspnea, Claimant meets the medical criteria required to receive a Level C care.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to award Claimant Level B care. Claimant will be given 3 additional points for incontinence, arthritis and dyspnea, for a total of 18 points. Claimant will be approved for Level C care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 14th day of September 2009.

**Kristi Logan
State Hearing Officer**