



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Joe Manchin III
Governor

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

November 13, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 12, 2009. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker service hours under the Aged/Disabled (HCB) Title XIX 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 (ADW) 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 501)

Information submitted at your hearing reveals that your condition at the time of your Pre Admission Screening qualifies for the degree of care and services offered under the Level (B) of Care under the ADW program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to decrease your Level of Care under the Aged/Disabled Waiver Program from Level © to Level (B).

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
Abode Health Care

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

-----,

Claimant,

v.

Action Number: 09-BOR-1507

**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 November 12, 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 November 12, 2009 on a timely appeal filed July 10, 2009.

It should be noted that the Claimant's benefits have continued 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 Representative

-----, Office Coordinator, LPN, Abode Health Care, Claimant's Witness

Angel Khosa, Bureau for Senior Services, Department Representative

Angie Hill, RN, WVMI, Department witness

It should be noted that the Department participated by conference call.

Presiding at the Hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 501

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 501, two (2) pages
- D-2 Pre-Admission Screening (PAS) assessment completed on June 29, 2009, seven (7) pages
- D-3 Notification Letter for Hearing dated October 2, 2009, two (2) pages
- D-4 Informed Consent and Release form dated June 29, 2009, one (1) page
- D-5 Medical Necessity Evaluation Request Form

Claimant's Exhibits:

- C-1 Page from Pre-Admission Screening Notice dated July 8, 2008, one (1) page

VII. FINDINGS OF FACT:

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter called ADW, was undergoing an annual reevaluation to verify continued medical eligibility in June 2009.
- 2) The West Virginia Medical Institute (WVMI) nurse, Angie Hill, completed a medical assessment Pre-Admission Screening (PAS) form (D-2) on June 29, 2009 and determined that the Claimant continues to meet the medical eligibility criteria.
- 3) Three (3) points were assessed for Medical Conditions and Symptoms for Dyspnea, mental disorder, and other – Polio. One (1) point was assessed for ability to vacate a

building. Eight (8) points were assessed in the area of functional abilities in the home; specifically: one (1) point for eating, one (1) point for bathing, one (1) point for dressing, one (1) point for grooming, one (1) point for bladder incontinence, one (1) point for transferring, and two (2) points for walking. In addition, one (1) point was assessed for medication administration. A total of thirteen (13) points were assessed during the assessment, and the Claimant was assessed at Level (B) care. The Claimant would need five (5) additional points in order to be assessed at Level (C).

4) Witnesses for the Claimant raised issues in the following areas:

Arthritis, which is listed under “Medical Conditions/Symptoms” on the PAS: The Claimant was not assessed a point in this area. The WVMI nurse recorded on the PAS that the Claimant has no diagnosis for this condition and no prescription medication. She also recorded that the Claimant reports “a lot of arthritis”. Also recorded under “pain” she added the Claimant reports she has an ache in her shoulders and legs all the time but is tolerable.

The Claimant’s Representative and daughter, -----, testified that the Claimant has osteoarthritis and referred to the bent and disfigured fingers of the Claimant’s hands as possibly caused by the arthritis. She states the Claimant is in the process of having the physician diagnose the cause, but states she has had arthritis for some time. The WVMI nurse stated that she did not contact the physician to attempt to clarify whether the Claimant has this diagnosis. The Claimant offered as evidence a page from the prior year’s Pre-Admission Screening (PAS) form (C-1) which includes an entry from the WVMI nurse regarding “Significant Arthritis”. The form is dated July 8, 2008 and includes the following pertinent information:

No dx documented on the referral form. Last year’s referral form documented OA, since this is a chronic condition I will accept the documentation from last year’s PAS. No Rx for meds. Member reports this affects her neck, shoulders and her back.

The prior year’s PAS information is being allowed over the objections of the Department and supports the Claimant’s contention that she has arthritis. The “referral form” mentioned in the nurse’s comments refers to the form the Claimant’s physician completed when she was referred for reevaluation, thus indicating the physician had previously documented this diagnosis and for whatever reason apparently neglected to enter it on the current year’s referral form (D-5). In addition, some of the entries in the sections marked “Diagnosis and Medical Conditions” made by the physician on his current referral form (D-4) are illegible.

Paralysis, which is listed under “Medial Conditions/Symptoms” on the PAS: The Claimant was not assessed a point in this area. The WVMI Nurse recorded on the PAS that the Claimant has no diagnosis and “member denies”. On one section of the PAS she recorded that the member is unable to pull her feet up to the opposite knee d/t weakness from the polio. There is no further mention of discussion about the Claimant’s polio and whether any paralysis exists. The WVMI nurse did not contact the physician to clarify whether the Claimant has the diagnosis of paralysis.

The Claimant's Representative contends the Claimant does have paralysis from the Polio. She again refers to the prior year's PAS (C-1) dated July 8, 2008 which includes the following narrative from the WVMi nurse:

Dx of polio documented on the referral form. Last year's referral form documented paraplegia, since this is a chronic condition I will [sic] accept the documentation from last year's PAS. No Rx for meds.

Again, the referral form is the physician completed form and therefore supports that the physician has diagnosed the Claimant with paralysis. The Claimant testified that she couldn't understand what the nurse was saying during the assessment because she was speaking "too fast". She added that she asked her to slow down and she did briefly, but then began speaking quickly again. The Department's representative stated that she had observed the WVMi nurse during interviews and had never noticed her behaving in this manner.

Dysphagia, which is listed under "Medical Conditions/Symptoms" on the PAS: The Claimant was not assessed a point in this area. The WVMi nurse recorded that there was no diagnosis, and the member denies this condition. She added the member reports a diet of low sodium and has a good appetite.

The Claimant's Representative stated that the Claimant has trouble swallowing, and had surgery on her throat because of this problem a couple of years ago. She added she can't swallow easily but this has not been a continuous problem. The Claimant testified that she doesn't remember the nurse asking this question, and that she does have problems swallowing.

Contracture, which is listed under "Medical Conditions / Symptoms" on the PAS: The WVMi nurse did not assess the Claimant a point in this area. She recorded there was no diagnosis and the member denies having the condition. She also recorded the following pertinent information:

Member Reports she is ok today. Poor hand strength bilat. Member fingers stay partially flexed at the middle joint but she is able to extend and flex her fingers. Member is able to raise her arms to shoulder level and states she has a constant ache in them. Member is unable to bend over to reach her toes and cannot pull her feet up to the opposite knee d/t weakness from the polio.

The Claimant's Representative stated that although she has gotten worse since the PAS was completed she did not have contractures at the time of the PAS.

Transferring, which is listed under "Functional Levels" on the PAS: The Claimant was assessed as needing "supervised/assistive device" for this function and was assessed one (1) point in this area? The WVMi nurse recorded the following pertinent information on the PAS:

Member is able to stand to pivot. Member reports she pivots in and out of the regular [sic] bed to her wheelchair. Member states she

pivots on and off the 3 in 1 toilet seat. No report of member needing one person assist with transfers in the home.

The Claimant's Representative states that she cannot transfer from her power chair to another without one person assistance. The Claimant corroborated this claim in her testimony.

Wheeling, which is listed under "Functional Levels" on the PAS: The Claimant was assessed as "wheels independently" and assessed no points in this area. The WVMI nurse recorded the following on the PAS:

Member reports she is w/c dependent and uses an electric wheelchair. States she got stuck once under the stove when she lived in apt 2 but has not had any problems since moved into this apt #4.

The Claimant and her witnesses reported that she sometimes must use her regular manual wheelchair when the electric chair runs down. ----, the Office Coordinator for Abode Health Care, stated that the Claimant has called into the Agency at least two (2) times reporting that she is "stuck" in her electric wheelchair and requested physical help from the Agency as she cannot transfer from her power chair to another without physical assistance.

- 5) Aged/Disabled Home and Community Based Services Waiver Policy Manual Section 501.3.1.1 states in pertinent part:

A QIO (Quality Improvement Organization) under contract to BMS (Bureau for Medical Services) determines medical eligibility for the ADW Program.

- 6) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2.1 and 501.3.2.2 (D-1):

There are four levels of care for 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
- #35- 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

- 7) Aged/Disabled Home and Community Based Waiver Policy Manual Section 501.3.4 states in pertinent part:

MEDICAL REEVALUATION

Annual reevaluations for medical necessity for each ADW member must be conducted. The process is as follows:

C. If the QIO RN makes the contact, a letter is sent to the member, CMA (if applicable), and identified representative noting the contact and date of the home visit, allowing at least two weeks notice. When the home visit is made, the QIO RN, through observation and/or interview process, completes the PAS (Attachment 14). The RN will record observations and findings regarding the member's level of function in the home. RNs do not render medical diagnoses.

D. In those cases where there is a medical diagnosis question, the QIO RN will attempt to clarify the information with the referring physician. In the event that the RN cannot obtain the information, he/she will document such, noting that supporting documentation from the referring physician was not received.

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 the individual is awarded after being assessed by the QIO RN – in this case the West Virginia Medical Institute (WVMI) RN, utilizing the PAS assessment tool. The nurse is to determine functional abilities through observation and/or interviewing.
- 2) Policy also dictates that when there is a medical diagnosis question the QIO RN will attempt to clarify the information with the referring physician. In the event that the RN cannot obtain the information, he/she will document such, noting that supporting documentation from the referring physician was not received.

- 3) The Claimant received thirteen (13) points on a PAS completed by WVMI in June 2009 in conjunction with an annual evaluation, which resulted in a reduction in level of care from Level (C) to Level (B). For the previous level of care, the Claimant would need at least five (5) additional points for a total of eighteen (18) points.
- 4) The Claimant has raised the issue that the WVMI nurse should have assessed additional points for several medical conditions and symptoms during the June 2009 assessment; for specifically, arthritis, paralysis, dysphagia, and contractures.
- 5) The testimony and evidence provided during the hearing clearly shows the Claimant has been diagnosed by her physician as having both arthritis and paralysis. Although the WVMI nurse did not have access to the prior year's PAS (C-1) which documents that her physician had diagnosed both conditions, she also did not follow policy by contacting him to clarify whether the conditions were present. The Claimant clearly expressed to the nurse that she had arthritis, and although the nurse indicated she denied any paralysis, it is reasonable to question whether a diagnosis of Polio may indicate potential paralysis, given the fact that the Claimant was listed as "non-ambulatory". The nurse did not pursue this avenue of questioning with the Claimant. There was clearly enough evidence present to expect that the nurse should contact the physician for clarification. Therefore, one (1) additional point is being awarded for each condition, arthritis and paralysis, for a total of two (2) points for these conditions.
- 6) There is insufficient evidence to support that the Claimant has Dysphagia. The Claimant denied this condition, and although there was some evidence that this was a problem in the past, not enough evidence was provided to support that the Claimant continues to suffer from this condition. No points are awarded for this condition.
- 7) The evidence also does not clearly show that the Claimant has Contractures. Although the Claimant was shown to have stiffness in her fingers, the evidence supports that it was not at a level that would be consistent with contractures, as there was some movement at the time. In addition, the Claimant's Representative clearly stated during testimony that she did not have Contractures at the time of the PAS assessment. No point is awarded in this area.
- 8) In the area of Transferring, the WVMI nurse clearly recorded on the PAS that there was no mention of needing one person assistance with transferring, and that the Claimant was able to pivot from one position to the other by herself. The Claimant stated that she cannot transfer from her power chair to another without one person assistance. Although the Claimant contends she needs one person assistance, there was insufficient evidence presented to support that this was the case when the PAS was completed. No points are awarded in this area.
- 9) In the area of Wheeling, the Claimant clearly reported during the PAS that she had previous incidents of being "stuck", and testimony during the hearing supports that she cannot always use her electric wheelchair in the home and must resort to the manual chair. When using the manual chair the Claimant requires one person physical assistance and is therefore awarded two (2) points.

- 10) With the additional four (4) points awarded for arthritis, paralysis, and wheeling the Claimant now has a total of seventeen (17) points. This rating falls under Level (B) care and does not change the Claimant's homemaker hours.
- 11) The Department's decision to reduce the Claimant's level of care to Level (B) is correct.

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 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 13th Day of November, 2009

**Cheryl Henson
State Hearing Officer**