



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 17, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 10, 2009. Your hearing request was based on the Department of Health and Human Resources' reduction of your homemaker service hours in the Aged/Disabled Waiver Program due to a level of care determination.

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. Some of these regulations state that for the Aged/Disabled Waiver Program individuals are evaluated by utilizing the Pre-Admission Screening (PAS) tool to assess their functioning abilities in the home. Points are assigned by the nurse based on the information derived from the PAS assessment interview, and the level of care is divided into four categories of assistance. The individual's level of care is determined based on the points assessed during the completion of the PAS. (Aged and Disabled Waiver Manual Section 501)

The information provided during your hearing shows that you continue to meet the medical requirements for Level of Care (B) in the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to reduce your level of care under the Aged/Disabled Waiver Program.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

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



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

-----,

Claimant,

v.

Action Number: 09-BOR-1936

**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 10, 2009 for ----- [REDACTED] 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 10, 2009 on a timely appeal filed September 10, 2009.

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 Case Manager, representing Claimant
-----, Claimant's witness

Angel Khosa, Bureau of Senior Services, representing Department
Stacy Leadman, RN, WVMI, Department's witness

It should be noted that both the Department and the Claimant participated by conference call. It should also be noted that the Claimant chose to have her Case Manager, -----, represent her for the purposes of this hearing.

Presiding at the hearing was Cheryl Henson, State Hearing Officer and 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 Level of Care benefits under the Aged/Disabled Home and Community-Based Waiver 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 July 10, 2009, eight (8) pages
- D-3 Medical Necessity Evaluation Request form signed March 16, 2009
- D-4 FAX from Putnam Aging dated August 18, 2009

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an annual re-evaluation for the Title XIX Aged and Disabled Waiver Program during the month of July 2009.
- 2) A West Virginia Medical Institute (WVMI) nurse, Teresa McCallister, completed the Claimant's assessment on July 10, 2009 and determined that she continues to meet the medical requirements for the program; however, she was assessed at Level of Care (B) rather than (C). The Claimant received sixteen (16) points during the PAS assessment, which places her in Level (B) care. For Level of Care (C) the Claimant would need at least eighteen (18) points. Ms McCallister was not available for testimony during the hearing. The Department elected to have another WVMI nurse, Stacy Leadman, present her findings.
- 3) The Claimant contends that additional points should be awarded in the areas of pain and orientation. Each area is addressed below:

Pain - which is evaluated under "Medical Conditions/Symptoms" on the PAS. The Claimant was not assessed a point in this area. The WVMI Nurse recorded the

following on the PAS:

No md dx. No Rx medication. Mem reports does have arthritic [sic] pain, “no need to complian [sic] because I don’t want any more meds”. PT is applying warm packs for relief.

The Claimant’s Homemaker, ----, stated she has a lot of pain in her legs, knees and feet from Osteoarthritis. She states she was given shots for this in the nursing home. She has neuropathy also. She added the Claimant takes nitroglycerin for chest pain. She last took the nitroglycerin in April 2009. There is no evidence the WVMi nurse attempted to contact the physician to clarify this issue.

Orientation - which is evaluated under “Functional Levels” on the PAS. The Claimant was not assessed a point in this area. The WVMi nurse recorded the following on the PAS:

Oriented x 3, appropriate responses

The Claimant’s Homemaker stated that the Claimant gets confused often. She added that if the Claimant gets a letter from the Department she gets confused. She added that the physician did a “quick assessment” of her, and she can’t remember from one hour to the next, and mixes things up all day. She stated that they have tried to get the physician to properly evaluate her, but they have not received a diagnosis in this area. The Department WVMi nurse, Stacy Leadman, testified that forgetfulness is not the same thing as disorientation.

4) Aged/Disabled Home and Community-Based Services Manual Section 501.3 (D-1) – MEMBER ELIGIBILITY AND ENROLLMENT PROCESS:

Applicants for the ADW Program must meet the following criteria to be eligible for the program:

C. Be approved as medically eligible for NF Level of Care.

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

Purpose: The purpose of the medical eligibility review is to ensure the following:

A. New applicants and existing clients are medically eligible based on current and accurate evaluations.

B. Each applicant/client determined to be medically eligible for ADW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term services needs.

C. The medical eligibility determination process is fair, equitable and consistently applied throughout the state.

6) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2.1 (D-1) LEVELS OF CARE CRITERIA states in pertinent part:

There are four levels of care for homemaker services. Points will be determined as follows, 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 given for j.

Wheeling

#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

Total number of points possible is 44

7) Aged/Disabled Home and Community Based Services Waiver Policy Manual 501.3.2.2 LEVELS OF CARE SERVICE LIMITS states:

Level	Points Required	Hours Per Day	Hours Per Month
A	5-9	2	62
B	10-17	3	93
C	18-25	4	124
D	26-44	5	155

The total number of hours may be used flexibly within the month, but must be justified and documented on the POC. Example: If the POC shows 4 hours/day, Monday-Thursday and 5 hours on Friday, the additional hour on Friday must be justified on the POC.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that there are four levels of care for homemaker services. Points are determined based on the individual’s medical condition and functional abilities at the time the PAS is completed. Points are assigned accordingly.
- 2) The Claimant was assessed at Level of Care (B) during her July 10, 2009 assessment, having received sixteen (16) points. To be assessed at Level of Care (C) the Claimant must be assigned at least eighteen (18) points during the assessment.
- 3) The testimony and evidence provided during this hearing support that the Claimant has pain, and one (1) point is awarded as a result, for a total of seventeen (17) points. The Claimant has

a diagnosis of Osteoarthritis which is associated with pain, and the Claimant clearly reported pain to the WVMi nurse during her assessment. The nurse neglected to contact the physician to clarify this symptom.

- 4) The evidence does not support an award for a point in the area of orientation. Evidence provided during the hearing supports that the Claimant is forgetful, but the evidence is not sufficient to support that the Claimant is disoriented.
- 5) A total of seventeen (17) are awarded the Claimant for the July 10, 2009 assessment, which supports Level of Care (B). The Department was correct in its decision to reduce the Claimant's Level of Care from Level (C) to Level (B).

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to reduce the Claimant's Level of Care from Level (C) to Level (B).

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 17th Day of November, 2009

**Cheryl Henson
State Hearing Officer**