



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 22, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 6, 2009. Your hearing request was based on the Department of Health and Human Resources' determination of homemaker hours under the Aged and Disabled Waiver 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.

The Aged and Disabled Waiver (ADW) Program is based on current policy and regulations. One of these regulations specifies that for the ADW Program, the number of homemaker service hours is determined based on the Level of Care. The Level of Care is determined by evaluating the Pre-Admission Screening Form and assigning points to documented medical conditions that require nursing services. Program services are limited to a maximum number of units and hours, which is reviewed and approved by the West Virginia Medical Institute. (Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2.1; §501.3.2.2)

The information that was submitted at your hearing revealed that, although an additional point should have been awarded on your most recent PAS, the Department was correct in its determination of your Level of Care and corresponding homemaker hours.

It is the decision of the State Hearing Officer to **uphold** the Department's determination of homemaker hours under the Aged and Disabled Waiver Program.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Angel Khosa, BoSS
Kathy Gue, WVMi
CWVAS, CMA

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

-----,

Claimant,

v.

Action Number: 09-BOR-825

**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 July 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 May 6, 2009 on a timely appeal, filed February 27, 2009.

It should be noted that benefits have been continued by the Department.

All persons offering testimony were placed under oath.

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
-----, Claimant's Case Manager, CWVAS
Angel Khosa, Department Representative
Kathy Gue, RN, WVMI

All persons participated by speakerphone.

Presiding at the Hearing was Todd Thornton, 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 Department was correct in its determination of the Claimant's homemaker hours under the Aged and Disabled Waiver Program.

V. APPLICABLE POLICY:

Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2.1; §501.3.2.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2.1; §501.3.2.2
- D-2 Pre-Admission Screening (PAS) for Aged and Disabled Waiver Services, dated February 12, 2009
- D-3 Notice of Decision dated February 17, 2009

VII. FINDINGS OF FACT:

- 1) Claimant is a 72-year old female recipient of Aged and Disabled Waiver (ADW) Services for whom a reevaluation was completed on February 12, 2009 (Exhibit D-2).
- 2) The Department issued a Notice of Decision (Exhibit D-3) to the Claimant on or about February 17, 2009. The notice states, in pertinent part:

You have been determined medically eligible to continue to receive in-home services under the Aged and Disabled Waiver Program. The number of homemaker service hours approved is based on your medical needs, and cannot exceed 124 hours per month.

- 3) Policy from Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2.1; §501.3.2.2 (Exhibit D-1), states, in pertinent part:

501.3.2.1 LEVELS OF CARE CRITERIA

There are four levels of care for homemaker services. Points will be determined as follows, based on the following sections of the PAS:

Section	Description of Points
#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. 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

Total number of points possible is 44.

All of the above levels of care criteria information also applies to Personal Options.

503.2.1 LEVELS OF CARE SERVICE LIMITS

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

- 4) The West Virginia Medical Institute (WVMI) RN reviewed the Claimant's February 12, 2009 PAS, and determined that the Claimant required a Level of Care "C." This was derived from her assessment of 24 points for the Claimant, and resulted in the 124 monthly service hours noted in Exhibit D-3. Seven (7) points were assigned for medical conditions and symptoms, one (1) for vacating, fourteen (14) for functional abilities in the home, one (1) for medication administration, and one (1) for a diagnosis of anoxia injury.
- 5) During the hearing, the Department conceded an additional point for decubitus, but noted that with a total of 25 points, there would still be no change in the Level of Care or corresponding service hours for the Claimant.
- 6) Areas of dispute noted on the Claimant's behalf were medication administration, and the medical conditions or symptoms of dysphagia and diabetes.
- 7) With regard to medication administration, testimony on the Claimant's behalf explained that they must put her medication in her mouth. The Department responded that an assessment of either the inability to administer medications, or the ability to do so with prompting and supervision, both result in one point.
- 8) Testimony on the Claimant's behalf stated that the Claimant should have been awarded points for dysphagia and diabetes. The WVMI nurse testified that these conditions were not diagnosed by a physician, and that she made an unsuccessful attempt to obtain the diagnoses from the Claimant's physician.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that an individual's Level of Care for the Aged and Disabled Waiver Program is determined by the number of points assessed on the PAS assessment tool. The Claimant received 24 points on her February 12, 2009 PAS, and was awarded a Level of Care 'C,' with a corresponding 124 monthly service hours. For the higher Level of Care, "D," the Claimant would require at least 26 points. In all the areas presented except for one, the evidence and testimony revealed that the Department correctly assessed the Claimant.
- 2) The Department acknowledged that, given clarification, they would have awarded a point for decubitus. This change results in a total of 25 points for the Claimant.

- 3) The areas of dysphagia and diabetes must be diagnosed by a physician. The Department clearly showed that they were not diagnosed on the most recent PAS, and that they attempted to verify this unsuccessfully. The Department was correct to not award points for these medical conditions.
- 4) With a total of 25 points, the Department correctly assessed the Claimant as requiring a Level of Care 'C,' and the corresponding 124 monthly service hours.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's determination of homemaker hours under the Aged and Disabled 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 July, 2009.

Todd Thornton
State Hearing Officer