



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

April 29, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 8, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker hours from Level B to Level A 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/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 submitted at your hearing revealed that you continue to meet the medical criteria for Level B care.

It is the decision of the State Hearings Officer to **Reverse** the proposal of the Department to reduce your homemaker hours to Level A care.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Bureau of Senior Services
West Virginia Medical Institute
[REDACTED]

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

-----,

Claimant,

v.

Action Number: 10-BOR-2256

**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 April 8, 2011 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.

It should be noted here that the claimant's benefits under the Aged/Disabled Waiver program have continued at Level B care pending a decision.

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

-----, Medical Attorney in Fact

-----, Staffing Coordinator, [REDACTED]

-----, [REDACTED]

Kay Ikerd, RN, Bureau of Senior Services

Teena Testa, 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. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department's proposal to reduce Claimant's homemaker hours is correct.

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 Waiver Policy Manual § 501.3.2
- D-2 Pre-Admission Screening Form dated October 14, 2010
- D-3 Notice of Decision dated October 20, 2010

Claimants' Exhibits:

- C-1 Medication Log from [REDACTED]

VII. FINDINGS OF FACT:

- 1) Claimant was re-evaluated for medical eligibility for the ADW program on October 14, 2010. A Pre-Admission Screening Form (PAS) was completed that date by Teena Testa, RN with the West Virginia Medical Institute (WVMI).

Claimant received a total of 9 points on the October 2010 PAS, reducing her level of care from Level B to Level A (D-2).

- 2) -----, Claimant's granddaughter and homemaker, testified on Claimant's behalf. -----stated Claimant needs to be reminded to take her medication. ----- stated Claimant keeps a log of when she has taken her medications but still forgets sometimes to take them. ----- stated her grandmother chokes easily and she must crush Claimant's pills up for her and mix into food. She also stated she has to puree Claimant's foods.

----- stated she moved back to this area 6-8 months ago to provide care for her grandmother. ---
-- stated her aunt, who was present at the October 2010 assessment, used to help Claimant with

her affairs and may not have disclosed all of Claimant's deficiencies to the assessing nurse. ----
- testified that Claimant was afraid of being put in a nursing home and answered the assessing nurse like "she was expected to".

- 3) ---- with [REDACTED] testified that Claimant had shingles in October 2010 and was prescribed Neurontin for pain. [REDACTED] stated Claimant should have been awarded a point for pain on the PAS. [REDACTED] submitted Claimant's medication log showing Neurontin was added to Claimant's medications on October 4, 2010; prior to the date of the assessment (C-1).
- 4) Teena Testa, assessing nurse with WVMI, testified to the PAS she completed on Claimant. Ms. Testa stated Claimant admitted to having problems with choking, but did not mention the need to puree foods or crush medications. Claimant advised Ms. Testa that she kept notes of when she took her medications, but denied needing reminders to take them. Ms. Testa stated she reviewed the PAS with Claimant's case manager and daughter at the end of the assessment, and all were in agreement with its contents.
- 5) The PAS dated October 14, 2010, page 6-7 under the section walking reads (D-2):

When it comes to walking client was sitting in her recliner chair. She stood up and held onto the furniture as she walked in the home. She notes she is weaker since she got the shingles and was started on the medication.

- 6) Aged/Disabled Home and Community Based Waiver Manual § 501.3.2.1 and 501.3.2.2 states:

- #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. Claimant was awarded 9 points as the result of a PAS completed by WVMi in October 2010 in conjunction with her annual medical evaluation.
- 2) The testimony and documentation provided indicated Claimant had a diagnosis of shingles in October 2010 and was taking the prescription pain medication Neurontin during the time of the assessment. The WVMi nurse made note of Claimant's shingles and that she was taking medication for the condition on the PAS, but failed to fully explore this area. Claimant was on prescription pain medication in October 2010 and should have been awarded one (1) point for pain.
- 3) With the addition of a point for pain, Claimant continues to meet the medical criteria to remain a Level B care.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to reduce Claimant's homemaker hours. Claimant will be award one (1) additional point for pain, reinstating her level of care to Level B.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 29th day of April 2011.

**Kristi Logan
State Hearing Officer
Member, Board of Review**