



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

Board of Review
P.O. Box 1736
Romney, WV 26757

Earl Ray Tomblin
Governor

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

March 17, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held March 2, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker service hours under the Medicaid Aged/Disabled (HCB) Title XIX Waiver Services Program.

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 and 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 are reviewed and approved by WVMI (Aged/Disabled Home and Community Based Waiver Policy and Procedures Manual 501.3).

The information which was submitted at your hearing revealed that while you remain medically eligible for participation in the Aged and Disabled Waiver program, your Level of Care should be reduced from a level "D" to a level "C" Level of Care. As a result, you are eligible to receive 4 hours per day or 124 hours per month of homemaker services.

It is the decision of the State Hearings Officer to Uphold the proposal of the Department to reduce your homemaker service hours under the Medicaid Aged/Disabled (HCB) Title XIX Waiver Services program.

Sincerely,

Eric Phillips
State Hearings Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Kay Ikerd, BoSS
Senior [REDACTED] INC.

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

-----,

Claimant,

v.

Action Number: 11-BOR-434

**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 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 March 2, 2011 on a timely appeal, filed December 16, 2010.

It should be noted here that the Claimant's benefits under the Aged and Disabled Waiver program continue at the previous level of determination pending a decision from the State Hearing Officer.

II. PROGRAM PURPOSE:

The Aged and Disabled Waiver program, hereinafter ADW, 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 husband

-----, Homemaker Aide, We Care Homecare

Kay Ikerd, RN, Bureau for Senior Services (BoSS)

B.J. Sides, RN, West Virginia Medical Institute (WVMI)

Presiding at the hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its proposal to reduce the Claimant's homemaker service hours provided through the Medicaid Aged and Disabled Waiver program.

V. APPLICABLE POLICY:

Aged and Disabled Home and Community Based Waiver Policy Manual Chapter 501.3.2.1 and Chapter 501.3.2.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged and Disabled Home and Community Based Waiver Policy Manual Chapter 501.3.2.1 and Chapter 501.3.2.2
- D-2 Pre-Admission Screening Assessment dated November 4, 2010.
- D-3 Notice of Decision dated November 17, 2010

VII. FINDINGS OF FACT:

- 1) On November 4, 2010, the Claimant was medically assessed to determine her continued eligibility and to assign an appropriate Level of Care, hereinafter LOC, in participation with the Aged and Disabled Waiver program. Prior to the reevaluation, the Claimant was assessed at a Level "D" LOC under the program guidelines.
- 2) On November 17, 2010, the Claimant was issued a Notice of Decision, Exhibit D-3. This exhibit noted that the Claimant had been determined medically eligible to continue to receive in-home services under the program guidelines, but her corresponding level of care would be reduced to 124 hours per month (LOC "C" determination).
- 3) B.J. Sides, West Virginia Medical Institute (WVMI) assessing nurse completed Exhibit D-2, the Pre-Admission Screening assessment, hereinafter PAS, as part of her medical assessment of the Claimant. Ms. Sides testified that the Claimant was awarded a total of 25 points during the evaluation. The Claimant was awarded points in the following areas of the PAS assessment; Medical Conditions and Symptoms-6 points, Vacating During an Emergency-1 point, Functional Levels-17 points, Medication Administration-1 point.
- 4) -----, the Claimant's husband contends that additional points should be awarded in Professional Technical Care needs (Skin Care), Vision, Communication, and Significant Arthritis.

The following addresses the contested areas:

Skin Care----- indicated that the Claimant experiences a "skin breakdown" on the back of her leg and elaborated that this breakdown is a pressure sore, in which the skin is not broken,

which was present at the time of the assessment. ----- stated that the Claimant has taken a cream medication for this condition, which was not listed on the PAS assessment. Ms. Sides testified that she would need to know if a pressure sore has been diagnosed and the stage of such sore, but she was not informed at the assessment of any decubitis. Ms. Sides reviewed the list of medications listed on the PAS assessment and acknowledged that none of the medications provided were used to treat any form of decubitis. Ms. Ikerd stated that for level of care, any decubitis would be awarded an assessment of a point.

The Claimant's representative contends that the Claimant should be awarded an additional point for skin care under the Professional and Technical Care needs section of the PAS. Policy is clear that points may be administered in the area for continuous oxygen only; therefore, the Claimant would not qualify for a point under the contested area. However, testimony indicated that the Claimant sore was consistent with a decubitis ulcer. At the time of the assessment, the Claimant did not indicate that she suffered from any pressure sores or decubitis and any information concerning a decubitis ulcer was not related by the Claimant's physician in the request for re-evaluation. In order to obtain a point in the area of decubitis, the ulcer must be diagnosed; in the absence of such diagnosis from the Claimant's physician, an additional point in the contested area **cannot** be awarded.

Vision-The Claimant testified that she experiences pain and a lack of vision out of her right eye. The Claimant stated that she can see out of her right eye when she closes her left eye. ---- -further addressed the Claimant's vision by stating that the Claimant has limited use of her right eye due to a neurological condition which she requires total care. Ms. Ikerd stated that the WVMi assessing nurse evaluates the functional merits of an individual's condition and evaluates whether or not the individual is capable of navigating in their surroundings.

During the assessment, the Claimant's vision was assessed as corrected with glasses. Although the Claimant experiences some difficulties in the contested area, testimony indicated that she was able to see out of her right eye when she closes her left eye. Testimony did not indicate that the Claimant's vision impairment incapacitated her ability to navigate her surroundings; therefore, a point in the contested area **cannot** be awarded.

Communication----- purported that his wife experiences short-term memory loss and disorientation. Ms. Ikerd indicated that the assessing nurse evaluates the individual's capacity to communicate through speaking, writing, sign language, etc.

The Claimant's communication was assessed as unimpaired at the PAS assessment. The Claimant was able to communicate clearly during the assessment without difficulty; therefore, an additional point in the contested area **cannot** be awarded.

Significant Arthritis----- stated that the Claimant has been diagnosed with arthritis. Ms. Sides indicated that the physician, who requested the annual evaluation, only related a diagnosis of quadriparesis (limb weakness). Ms. Sides stated that the Claimant did not relate any problems with arthritis during the assessment and was not taking any specific anti-arthritic medications, but was taking prescribed medications for pain. Ms. Sides stated that she could only act upon information related at the time of the PAS assessment and there was no indication of a diagnosis of arthritis. The PAS assessment (Exhibit D-2), list a prescribed pain medication of oxycodone for the Claimant. Ms. Sides indicated that oxycodone could be prescribed for arthritic pain, but is generally prescribed for chronic pain. Additionally, -----

stated that his wife has been prescribed ibuprofen by her physician for her arthritis and pain and she obtains this as an over-the-counter medication. Ms. Ikerd indicated that over-the-counter medication is not considered when administering points in the medical conditions portion of the assessment.

During the assessment, the Claimant did not relate any diagnosis of arthritis and such diagnosis was not related from the referring physician. Based on information related during the assessment, the Claimant was awarded points toward her level of care for a diagnosis of pain; however, there was no indication during the assessment that the Claimant suffered or had been diagnosed with arthritis. Therefore, additional points in the contested area **cannot** be issued.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2.1 and 501.3.2.2: 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 - 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 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

- 6) Aged/Disabled Home and Community Based Services Policy Manual 501.3.4 D documents in pertinent part:

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) Medicaid policy dictates that an individual's Level of Care (LOC) is determined by the number of points awarded on the Pre-Admission Screening (PAS) assessment tool.
- 2) On November 4, 2010, the Claimant was assessed a total of 25 points as part of her PAS assessment completed by West Virginia Medical Institute.
- 3) As a result of evidence and testimony presented during the hearing process, no additional points may be awarded. The Claimant's total points remain at 25.
- 4) In accordance with existing policy, an individual with 25 points qualifies as a Level "C" LOC and is therefore eligible to receive 4 hours per day or 124 hours per month of homemaker services.

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 _____ day of March, 2011.

**Eric L. Phillips
State Hearing Officer**