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

Earl Ray Tomblin
Governor

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

May 6, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 5, 2011. 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 (C) in the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** 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 / CCIL

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

-----,

Claimant,

v. **Action Number: 11-BOR-833**

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 May 5, 2011 on a timely appeal filed March 3, 2011.

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
-----, Claimant's witness

Angel Khosa, Department representative
Paula Clark, Department's witness

It should be noted that the hearing was conducted telephonically.

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 February 9, 2011, nine (9) pages
D-3 FAX from [redacted] dated March 2, 2011
D-4 Notice of Decision dated March 11, 2011

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

1) The Claimant was undergoing a required annual re-evaluation for the Title XIX Aged/Disabled Waiver Program during the month of February 2011.

2) A West Virginia Medical Institute (WVMI) registered nurse, Paula Clark, visited the Claimant at her home and completed her Pre-Admission Screening (PAS) medical assessment (D-2) on February 9, 2011. She determined that the Claimant continues to meet the medical requirements for the program. However, she was assessed at a reduced level from the previous determination; Level of Care (B) rather than Level (C). The Claimant received seventeen (17) 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.

3) During the hearing, the WVMI nurse discussed her findings in each relevant category and explained her reasoning for rating the Claimant in each area. After listening to the nurse's discussion of her findings, the Claimant disagreed with her conclusions, and

contends that an additional one (1) point should be awarded for the medical condition of "pain".

4) The nurse documented on the PAS (D-2) that she explained to the Claimant at the start of the assessment that in order to assess points for any of the medical conditions and symptoms provided in the PAS evaluation for consideration, which included "pain", she would need to find either evidence of a medical diagnosis or prescription medication.

5) The WVMI nurse testified that after she completed the PAS assessment in the Claimant's home, she sent a facsimile to the physician who completed the Claimant's Medical Necessity Evaluation Request form, Dr. [redacted] and requested that he verify whether the Claimant has the conditions and/or symptoms of dysphasia, pain, and arthritis. She stated that she did not receive a response from this physician. The Claimant reported during the PAS assessment that Dr. [redacted] is no longer her physician, and that Dr. [redacted] is now her physician.

6) The nurse stated that on or about March 2, 2011, she received a facsimile (D-3) from the Claimant's case management agency, [redacted] which included two (2) pages of documentation from two (2) different physicians. The first page was a hand written note, possibly from a prescription pad, signed by [redacted] M.D., in which the alleged physician stated that the Claimant was seen in the "clinic" on February 23, 2011, and that she has chronic pain issues from her burns and is taking medications as needed. The note also stated that the Claimant's "fentanyl patches" were stopped because of medical concerns and not changes in her level of pain. The note is signed by the physician and indicates he is affiliated with [redacted] The note also includes a telephone number for the physician. The nurse indicated that she did not consider this hand written note because it was not provided on letterhead that included the physician's contact information. She testified that she has been instructed during training not to accept this type of documentation. She stated that she did not attempt to contact the physician in order to clarify the information.

The second page of documentation (D-3) was signed by a physician purported to be Dr. [redacted] and clearly written on a prescription pad that included the physician's name of business, address, and contact information printed on the pad. The nurse indicated she accepted this as reliable documentation, and added that this statement confirmed that the Claimant has dysphagia. The hand written note states that the Claimant has a history of dysphagia since having a burn injury with significant respiratory damage.

7) The Claimant contends that sufficient information was provided during the assessment and afterwards to support an award of one (1) point for pain. She reported during the PAS assessment that she has pain in her legs, arms, chest, back, and scalp. Her attending physician submitted information indicating she has pain; however, the nurse did not contact him to clarify the information. The Claimant is also diagnosed with migraines.

8) Aged/Disabled Home and Community-Based Services Manual Section 501.3 – 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.

9) 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.

10) 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 toal 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

11) 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.

12) Aged/Disabled Home and Community Based Services Waiver Policy Manual 501.3.4 states in pertinent part:

C. …the QIO RN, through observation and/or interview process, completes the PAS. 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 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 February 9, 2011 assessment, having received seventeen (17) points. To be assessed at Level of Care (C) the Claimant must be assigned at least eighteen (18) points during the assessment.

3) Policy provides that during the assessment process, the Department is to complete the PAS by means of both observation and/or an interview process in order to determine the individual's functional ability in the home. Although policy is found that indicates the nurse is not to render medical diagnoses, no policy is found that requires the nurse to document symptoms such as pain with either a diagnosis or evidence of prescription medication in order to support a deficit.

4) The totality of the testimony and evidence provided during this hearing support that the Claimant also has the medical condition of "pain". As such, an additional one (1) point is awarded for her pain.

5) The PAS assessment clearly shows that the Claimant reported that she has pain in her arms, legs, chest, back, and scalp. The PAS also clearly shows that the Claimant is diagnosed with migraines.

6) With the additionally awarded one (1) point for pain, the Claimant now has a total of eighteen (18) points, which supports a Level of Care (C). The Department was not 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 **reverse** 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 6th Day of May, 2011.

_____

Cheryl Henson
State Hearing Officer