



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

June 6, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held June 3, 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 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 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 WVMH (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 "C" to a level "B" Level of Care. As a result, you are eligible to receive 3 hours per day or 93 hours per month of homemaker services.

It is the decision of the State Hearing 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 L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Kay Ikerd, Bureau of Senior Services

-----, [REDACTED]

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-895

**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 a timely appeal, filed March 9, 2011.

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 witness*

-----, Case manager

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

Debbie Sickles, 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.

*participated telephonically

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 February 10, 2011

D-3 Notice of Decision dated March 25, 2011

D-4a Prescription Pad note from [REDACTED] M.D.

D-4b Return Outpatient Note from [REDACTED] dated January 5, 2011

D-4c Letter from [REDACTED] M.D.

VII. FINDINGS OF FACT:

- 1) On February 10, 2011, 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 re-evaluation, the Claimant was assessed at a Level "C" LOC under the program guidelines.
- 2) On March 25, 2011, 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 93 hours per month (LOC "B" determination).
- 3) Ms. Debbie Sickles, 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. Sickles testified that the Claimant was awarded a total of 15 points during the evaluation.
- 4) The Claimant and her representatives contend that additional points should be awarded in the areas of bladder incontinence, orientation, wheeling, and grooming.

The following addresses the contested areas:

Bladder Incontinence- -----, the Claimant's Case Manager with [REDACTED] purported that the Claimant has indicated "dribbling accidents" of the bladder of three to five times a week. Ms. Sickles stated that the Claimant denied any accidents with her bowel and bladder at the time of the assessment. Exhibit D-4b, Return Outpatient Note from [REDACTED] dated January 5, 2011 documents that the Claimant denies, "any visual change, dizziness, vertigo, bladder, bowel problem, trouble swallowing or talking."

The Claimant denied any episodes of bladder incontinence and additional information from the Claimant's physician does not support the presence or frequency of bladder incontinence. Therefore, the Claimant was correctly assessed as continent and additional points in the contested area cannot be awarded.

Orientation-----indicated that the Claimant was oriented on the day of the assessment; however, she suffers from intermittent disorientation. Ms. Sickles noted in the PAS assessment, "Member knew DOB, SS#, phone #, full address including city, state, zip code, and knew current month, date, and year." Ms. Sickles stated that she compared her assessment of the Claimant with the additional information received from the Claimant's physician. Exhibit D-4b notes the Claimant's mental status as "orientation is normal" and Ms. Sickles assessed the Claimant accordingly.

During the assessment, the Claimant was alert and oriented to person, place and time. Additional information from the Claimant's physician indicated a normal orientation for the Claimant. Based on information related during the assessment, the nurse correctly assessed the Claimant as oriented and additional points in the contested area cannot be awarded.

Wheeling-----stated that the Claimant does utilize a wheelchair, but does not use a wheelchair in the home on a consistent basis. In regards to wheeling, Ms. Sickles noted in the PAS that the Claimant "does not use a wheelchair inside of the home" and assessed the Claimant as a Level 1, No Wheelchair.

During the assessment, the Claimant did not indicate the use of a wheelchair and testimony from -----fails to support that the Claimant utilizes a wheelchair on a consistent basis; therefore, an additional point in the contested area cannot be awarded.

Grooming-----indicated that the Claimant requires more "hands on" assistance in the area of grooming. Ms. Sickles assessed that Claimant as a Level 2 Physical Assistance in the area of grooming indicating that the Claimant was able to participate in the area of grooming and required assistance in some aspects of grooming.

The Claimant was assessed as a "Level 2 requires physical assistance" and awarded one point in the functional area. Documentation indicates that the Claimant can participate in her own mouth care and can use a razor, but requires assistance with hair and nail care. Information reported during the assessment indicated that the Claimant could participate in the area of grooming and does not require total care; therefore, an additional point cannot be awarded in the contested area.

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

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 February 10, 2011, the Claimant was assessed a total of 15 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 15.
- 4) In accordance with existing policy, an individual with 15 points qualifies as a Level "B" LOC and is therefore eligible to receive 3 hours per day or 93 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 June, 2011.

Eric L. Phillips
State Hearing Officer