



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

August 8, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 2, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker hours under the Aged/Disabled Waiver program from Level D to Level C.

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. These regulations state 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 WVMU (Aged/Disabled Home and Community Based Waiver Policy and Procedures Manual § 501.5).

The information submitted at your hearing revealed that you no longer meet the medical criteria required to continue receiving services at Level D care.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to reduce your homemaker hours to Level C care.

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Bureau of Senior Services
West Virginia Medical Institute
CCIL

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1247

**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 ----- held on August 2, 2012, by telephone conference. This hearing was held in accordance with the provisions found in the West Virginia Department of Health and Human Resources' Common Chapters Manual, Chapter 700. This fair hearing was convened on a timely appeal, filed April 27, 2012.

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

II. PROGRAM PURPOSE:

The Aged/Disabled Waiver (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 Medical Attorney-in-Fact
-----, Case Manager, CCIL
-----, Homemaker RN, ----- County Commission on Aging

Kay Ikerd, RN, Bureau of Senior Services
Michelle Wiley, RN, West Virginia Medical Institute

Presiding at the hearing was Kristi Logan, 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's proposal to reduce Claimant's homemaker hours is correct.

V. APPLICABLE POLICY:

Aged/Disabled Waiver Services Policy Manual § 501.5.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Waiver Services Policy Manual § 501.5.1
- D-2 Pre-Admission Screening dated April 18, 2011
- D-3 Pre-Admission Screening dated April 11, 2012
- D-4 Notice of Decision dated April 13, 2012

VII. FINDINGS OF FACT:

- 1) Claimant was reevaluated for medical eligibility for the Aged/Disabled Waiver program on April 11, 2012. A Pre-Admission Screening (PAS) was completed that date by Michelle Wiley, RN, with the West Virginia Medical Institute (WVMI) (D-3).

Claimant received 22 points on the April 2012 PAS, which equates to a Level C care. Claimant needed four (4) additional points to continue receiving homemaker services under Level D care (D-3).

- 2) -----, Claimant's Case Manager with CCIL, stated Claimant should have received additional points in bathing, transferring, communication, and bladder continence. ----- stated Claimant's right arm is paralyzed and he must use his left arm to hold up the right arm so the homemaker can bathe him. By holding up the paralyzed arm, Claimant would not have a way of bathing himself.

----- stated Claimant uses a lift chair that is left in an elevated position to transfer from a seated position. His communication is impaired, often laughing inappropriately. --- stated Claimant does not understand what is being said to him.

- 3) -----, Claimant's sister, testified that Claimant cannot get out of a chair that does not have arms. His homemaker will pull him up into a standing position by his belt. ----- stated Claimant has poor balance and uses his "good" arm to steady himself in the shower. ----- stated she has a difficult time understanding what Claimant says.

----- stated the day of the assessment was a good day for Claimant. His homemaker reported his condition as fair that day, surprising ----- as she thought Claimant was functioning well at that time.

- 4) -----, Homemaker RN with ----- County Commission on Aging, testified Claimant wears a leg brace that he cannot put on without assistance. ----- stated Claimant cannot get up without his brace and if he is home alone, he will just stay seated in his power chair. ----- stated Claimant has bladder incontinence 4-5 times a week. He is unable to thoroughly wash himself and has been found soiled after being alone for the weekend. ----- feels a reduction in Claimant's level of care would be detrimental to his condition.

- 5) Michelle Wiley, RN with WVMI, testified to the PAS she completed for Claimant in April 2012. Ms. Wiley stated Claimant was assessed as a level 2 in bathing because he is able to participate in that activity. Claimant is able to raise his arm for the homemaker to bathe him and because of this cannot be considered requiring total care in bathing.

Ms. Wiley stated Claimant's communication was mildly impaired but she was able to understand him throughout the assessment. Ms. Wiley stated she observed Claimant rise from a seated position by pushing himself up by the arms of the chair. He did not require physical assistance to perform this activity.

- 6) Pertinent parts of the April 2011 PAS document (D-2):

Bathing: [Homemaker] reports assisting [mem]ber with transfer to shower chair, and washes mem[ber] all over; mem[ber] reports he does not like shower, that he is cold; [homemaker] reports mem[ber] requires positioning of all limbs and even his head during shower.

Continence: Mem[ber] and [homemaker] report urinary incontinence 1-2 times weekly; and bowel incontinence daily of varying degrees.

Transferring: Observed mem[ber] rise from chair with difficulty, falling back into chair, then operated lift chair after prompted. He stood by twisting his trunk and holding to hemi-walker. [Homemaker] reports contact assistance when he rises from any other chair and out of bed; he sleeps in chair fully clothed when HM [homemaker] is not coming in the next day.

Communication: Mem[ber] verbalizes with difficulty, laughing frequently, and requires guessing by listeners during visit. ----- and

[homemaker] assisted by interpreting and completing statements for him throughout visit.

7) Pertinent parts of the April 2012 PAS document (D-3):

Bathing: He does have a shower chair. HM assists him in/out of the shower. HM says that he holds up the right arm for her, but she completes all aspects of bathing for him.

Continence: He has bladder incontinence that occurs less than three times weekly. HM says that the bladder incontinence used to be worse. She says that his prostate is enlarged.

Transferring: He does have a walker that he uses in the home. He has a brace that he uses on right leg. During the visit he was able to stand from the chair by pushing off using the left hand. He had moderate difficulty with standing. HM says he has a history of falls in the home. She says that the last fall occurred 2-3 weeks ago. He fell outside of the building. HM says that the falls generally fall outside of the home [sic]. He cannot get himself up if he falls. He has a lift chair, but the chair has a short in it.

Communication: During the visit he communicated fairly well. Speech was mildly impaired at times, but was understandable.

8) Aged/Disabled Waiver Services Policy Manual § 501.5.1.1 states:

- #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
 - #35 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 22 points as the result of a PAS completed by WVMI in April 2012 in conjunction with his annual medical evaluation. Based on the points received on the PAS, Claimant was evaluated at a Level C care.
- 2) Claimant reported to the WVMI nurse that his bladder incontinence was less than three (3) times weekly. The homemaker reported an improvement in Claimant's bladder incontinence. Based on this information, Claimant was assessed as a level 2 – occasional incontinence – for bladder. Testimony indicated Claimant's bladder incontinence occurred more frequently than what was reported at the assessment, however, the WVMI nurse makes functional determinations based on the information presented to her during the medical assessment. The WVMI nurse correctly assessed Claimant as occasional bladder incontinence according to what was made known to her at the time.
- 3) Claimant is able to participate to some degree in bathing activities. Regardless of the extent to which he is able to assist in bathing, his ability to position his limbs for the homemaker to bathe him cannot be considered total care for bathing. Claimant has improved in the area of bathing since the previous year, when he was unable to position himself at all. No additional points can be awarded in bathing.
- 4) The WVMI nurse observed Claimant transferring into a standing position with the use of the arms of his chair without anyone assisting him. Claimant has the physical ability to transfer without assistance from another person and was correctly assessed as level 2 – assistive device/supervision.
- 5) Testimony from the WVMI nurse indicated despite some impairment in communication, she was able to understand Claimant. Claimant was correctly assessed as a level 2 – impaired/correctable – based on Claimant's ability to communicate without assistance.
- 6) Claimant no longer meets the medical criteria required to continue receiving services at Level D care.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to reduce Claimant's homemaker hours under the Aged/Disabled Waiver program to Level C care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 8th day of August 2012

Kristi Logan
State Hearing Officer