



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 7, 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 care.

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 WVMH (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
Central WV Aging Services

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1256

**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, Central WV Aging Services

Kay Ikerd, RN, Bureau of Senior Services
Teresa McCallister, 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 12, 2011
- D-3 Pre-Admission Screening dated March 28, 2012
- D-4 Notice of Decision dated April 6, 2012

VII. FINDINGS OF FACT:

- 1) Claimant was reevaluated for medical eligibility for the Aged/Disabled Waiver program on March 28, 2012. A Pre-Admission Screening (PAS) was completed that date by Teresa McCallister, RN, with the West Virginia Medical Institute (WVMI) (D-3).

Claimant received 23 points on the March 2012 PAS, which equates to a Level C care. Claimant needed three (3) additional points to continue receiving homemaker services under Level D care (D-3).

- 2) -----, Claimant's Case Manager with Central WV Aging Services, testified Claimant has bowel incontinence. ----- stated Claimant has a history of frequent falls, and her service plan for the homemaker encourages contact assistance when Claimant walks. Claimant's vision has worsened since last year's assessment and Claimant has been diagnosed with dementia.
- 3) -----, Claimant's daughter-in-law, testified Claimant participates in bathing very little, washing only her private areas. In the area of grooming, Claimant only participates by brushing her hair, the rest is completed by the homemaker. ----- stated Claimant is incontinent of the bowels.

----- stated Claimant is in physical therapy and occupation therapy to increase her strength for walking. There are some days Claimant cannot participate in therapy. Claimant is on continuous oxygen and has unstable blood pressure. Claimant's vision has deteriorated in the last year, and they were advised by her doctor that there is no more treatment options available.

----- stated Claimant has had seven (7) falls since the assessment, requiring someone to stay close to her when she walks. Claimant has been diagnosed with dementia, but is not taking medication due to the side effects.

- 4) Teresa McCallister, RN with WVMI, testified to the PAS she completed for Claimant in March 2012. Ms. McCallister stated Claimant denied having bowel incontinence. She observed Claimant walking in the home with use of a walker, noting Claimant had a steady gait with the homemaker walking close behind her. Ms. McCallister was advised that Claimant required only occasional contact assistance when walking.

Ms. McCallister stated it was reported Claimant was able to watch television and could maneuver in the home.

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

Continence: Reports urinary incontinence daily, requiring diapers; bowel incontinence approx. 1 x every other week

Walking: Observed mem[ber] walk approx. 15-20 ft. using front wheeled walker, and slow, unsteady gait, and SOB [shortness of breath]. ----- walked closely behind and supervised. [Homemaker] reports that at least daily, mem[ber] requires contact assistance with walking in home. Falls at home reported.

Wheeling: ----- reports mem[ber] requires total wheeling when used in home during acute illness, such as when she is going to hospital.

Vision: ----- reports macular degeneration, hx [history] of detached retina, and that mem[ber] reports problems with vision, and eyes hurting. Mem[ber] watches tv some days, and closes her eyes at times. She required contact assistance to locate signature area of consent form, and was unable to locate date area.

- 6) Pertinent parts of the March 2012 PAS document (D-3):

Continence: Mem[ber] reports daily urinary incontinence; she denies bowel incontinence

Walking: Observed mem[ber] walk approx. 10-12 ft. with slow steady gait and use of front wheeled walker; HM [homemaker] managed

oxygen tubing and supervised closely; she report occasionally providing contact assist.

Wheeling: HM denies use in the home.

Vision: Mem[ber] is wearing glasses, and reports permanent blindness of rt. eye, and poor vision with lt. eye. She reports watching tv, and is able to identify objects without details. Mem[ber] reports macular degeneration.

7) 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 23 points as the result of a PAS completed by WVMi in

March 2012 in conjunction with her annual medical evaluation. Based on the points received on the PAS, Claimant was evaluated at a Level C care.

- 2) Claimant received a point for bowel incontinence in 2011, but was assessed as continent of bowel in 2012. Claimant denied having bowel incontinence to the WVMi nurse during the medical evaluation and the nurse was not presented with any contradictory information regarding bowel incontinence. The WVMi nurse must make functional assessments based on the information known to her at the time of the evaluation and based on Claimant's denial; no additional points can be awarded in this area.
- 3) Claimant participates in bathing and grooming. Although her participation is minimal, because Claimant has the physical ability to perform some bathing and grooming activities, she cannot be assessed as requiring total care. No additional points can be awarded in these areas.
- 4) Claimant's homemaker reported she provided occasional contact assistance to Claimant when walking. The WVMi nurse observed Claimant walking with the use of a walker, with the homemaker following closely behind. Because Claimant can walk with the use of an assistive device, and only intermittent physical assistance from the homemaker, no additional points can be awarded in this area.
- 5) Claimant reported the ability to watch television and identify objects within the home. Although Claimant's vision will not improve, she is able to function in the home with limited vision. No additional points can be awarded in this area.
- 6) A point for dementia cannot be given to Claimant without documentation from a physician of the diagnosis for prescription medication to treat the condition. A point for dementia cannot be awarded.
- 7) Claimant was correctly assessed as requiring Level C care under the Aged/Disabled Waiver program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to reduce Claimant's homemaker hours 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 7th day of August 2012

**Kristi Logan
State Hearing Officer**