



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

August 30, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 29, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker service hours under the 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/Disabled Waiver Program is based on current policy and regulations. One of these regulations specifies that for the Aged/Disabled Waiver Program, 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 WVMI. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual 501.5.1.1)

Information submitted at the hearing reveals that your documented medical conditions confirm your Level of Care should be a Level "D" rating. As a result, you are eligible to receive 125-155 hours per month of homemaker services.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to decrease your Level of Care under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
Lewis County Senior Center

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1505

**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 telephonically on August 29, 2012, on a timely appeal submitted to the Department on May 29, 2012.

It should be noted that the Claimant's benefits have continued pending a hearing decision.

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
-----, Case Manager, ----- County Senior Center
-----, RN, ----- County Senior Center
-----, Homemaker, ----- County Senior Center
Kay Ikerd, RN, Bureau of Senior Services
Melissa Bell, RN, West Virginia Medical Institute

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a 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 homemaker service hours under the Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Section 501.5.1.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 501.5.1.1(a) and 501.5.1.1(b)
- D-2 Pre-Admission Screening (PAS) assessment completed on April 18, 2012
- D-3 Notice of Decision dated April 27, 2012
- D-4 Letter signed by -----, M.D., on May 29, 2012 (sent to physician on April 26, 2012)
- D-5 Pre-Admission Screening (PAS) assessment completed on June 2, 2011

Claimant's Exhibits:

- C-1 Information from -----, M.D., dated July 24, 2012

VII. FINDINGS OF FACT:

- 1) The Claimant, a recipient of Aged/Disabled Waiver (ADW) Medicaid benefits, underwent an annual reevaluation to verify continued medical eligibility and assign an appropriate Level of Care.
- 2) West Virginia Medical Institute (WVMI) Registered Nurse Melissa Bell completed a Pre-Admission Screening (PAS) medical assessment (D-2) on April 18, 2012, and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 25 points for documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care "C" - eligible for 94-124 hours per month of homemaker services. It should be noted that the Claimant previously qualified for a Level of Care "D" - eligible for 125-155 hours per month of homemaker services.
- 3) On April 27, 2012, the Department sent the Claimant a Notice of Decision (D-3), advising her of the proposed reduction in homemaker service hours.

4) Information presented by the Department indicates that the Claimant reported difficulty with swallowing food and experiencing pain throughout her body during the assessment. As a result, the WVMI Nurse testified that she sent a letter to the Claimant's physician, -----, M.D., on April 26, 2012 (D-4), requesting that he confirm the diagnoses of dysphagia and pain. Kay Ikerd, Registered Nurse with the Bureau of Senior Services, testified that the letter was not returned to WVMI until May 30, 2012; therefore, the documentation was received outside of the timeframe for consideration by the Department. The documentation confirms the diagnoses of dysphagia and pain.

-----, Case Manager with the ----- County Senior Center, testified that she also attempted to secure diagnoses confirmation from -----, but he had been out of his office. The Claimant had an appointment with ----- on May 29, 2012, after which the physician returned diagnostic information to WVMI. ----- subsequently provided Exhibit C-1, information from -----, indicating that the Claimant has chronic pain.

5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Sections 501.5.1.1(a) and 501.5.1.1(b) (D-1): 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- Decubitis- 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- 0-62 hours per month
- Level B- 10 points to 17 points- 63-93 hours per month
- Level C- 18 points to 25 points- 94-124 hours per month
- Level D- 26 points to 44 points- 125-155 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.
- 2) The Claimant was awarded 25 points as the result of a PAS completed by WVMI in April 2012 in conjunction with her annual medical evaluation.
- 3) As a result of information presented during the hearing, two (2) additional points are awarded to the Claimant for the medical conditions of dysphagia and pain. The Claimant reported these medical conditions on the date of the assessment and the conditions have since been confirmed by her physician.
- 4) The Claimant's total number of points is elevated to 27, rendering her eligible to receive a Level "D" Level of Care.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** 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 30th Day of August 2012.

**Pamela L. Hinzman
State Hearing Officer**