



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

September 12, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 6, 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)

While information submitted at the hearing reveals that you continue to require the degree of care and services necessary to qualify medically for the Aged/Disabled Waiver Program, your documented medical conditions confirm that your Level of Care should be a Level "B" rating. As a result, you are eligible to receive up to 93 hours per month of homemaker services.

It is the decision of the State Hearing Officer to **uphold** 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
CWWAS

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1568

**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 September 6, 2012, on a timely appeal submitted to the Department on June 18, 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

-----, Claimant's granddaughter

-----, RN, -----County Senior Center

-----, Homemaker, -----County Senior Center

Pam Pushkin, RN, Quality Assurance Monitor, Bureau of Senior Services

Barbara Plum, 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 Notice of Decision dated June 4, 2012
- D-3 Pre-Admission Screening (PAS) assessment completed on May 21, 2012
- D-4 Pre-Admission Screening (PAS) assessment completed on June 20, 2011

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 Barbara Plum completed a Pre-Admission Screening (PAS) medical assessment (D-3) on May 21, 2012, and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 14 points for documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care "B" - eligible for 63-93 hours per month of homemaker services. It should be noted that the Claimant previously qualified for a Level of Care "C" - eligible for 94-124 hours per month of homemaker services - as a result of a PAS completed on June 20, 2011 (D-4).
- 3) The Department sent the Claimant notification on June 4, 2012 (D-2), advising him of the proposed reduction in homemaker service hours.
- 4) The Claimant's representatives contended that he should have been awarded additional points for the conditions of dyspnea (1 point) and pain (1 point). They indicated that the Claimant

experiences pain in his legs and knees, and hopes to work with a physical therapist to strengthen them. In addition, the representatives testified that the Claimant becomes short of breath and takes Ranexa prescription medication for dyspnea. The WVMI Nurse testified that the Claimant reported experiencing shortness of breath on the date of the PAS, but stated he had not spoken to his physician about the problem. She stated that there was no diagnosis or prescribed medication for the condition at the time of the PAS. It should be noted that the PAS lists Ranexa as one of the Claimant's medications; however, it states the drug is used to treat angina. The Claimant was awarded two (2) points on the assessment for angina at rest and angina at exertion.

The Claimant's representatives stated that the Claimant has a wound on his hip that reopens frequently. The WVMI Nurse testified that the Claimant provided no information about a decubitus ulcer on the date of the assessment.

The Claimant's representatives indicated that the Claimant experiences bowel incontinence and confusion at times. The WVMI Nurse testified that the Claimant denied bowel incontinence on the date of the assessment, and was oriented to person, place and time, although he misstated the date by one day. The Department contended that confusion is not considered disorientation.

The Claimant's representatives testified that the Claimant does not hear well and that individuals must be on his right side in order for him to hear them. They also indicated that his communication is impaired. The WVMI Nurse testified that the Claimant was able to hear when she spoke with a louder voice on the date of the assessment, and that his speech was impaired, but understandable. Therefore, the Claimant's hearing was rated as Level 2 (impaired/correctable) and his communications ability was rated as Level 2 (impaired/understandable).

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 14 points as the result of a PAS completed by WVMi in May 2012 in conjunction with his annual medical evaluation.
- 3) As a result of information presented during the hearing, no additional points are awarded. No diagnosis verification was provided to the Department in regard to the conditions of dyspnea and pain. Bowel incontinence was denied at the time of the PAS, and no decubitus ulcers were reported. While the Claimant's hearing and speech are impaired, the Claimant was able to hear when spoken to in a loud voice and could be understood by the WVMi Nurse on the date of the assessment.
- 4) The Claimant's total number of points remains at 14, rendering him eligible to receive a Level "B" Level of Care.

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 12th Day of September 2012.

**Pamela L. Hinzman
State Hearing Officer**