



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

Rocco S. Fucillo
Cabinet Secretary

September 17, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 13, 2012. 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 Services program is based on current policy and regulations. These regulations provide that the number of homemaker service hours are 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 West Virginia Medical Institute (WVMI) (Aged/Disabled Home and Community Based Waiver Policy and Procedures Manual 501.5.1).

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 LOC should be reduced from a level "C" to a level "B".

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
CWWAS

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1810

**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 Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This hearing convened on September 13, 2012, on a timely appeal, filed July 17, 2012.

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

-----, Case Manager, Central West Virginia Aging Services (CWVAS)

-----, RN Program Supervisor, CWVAS

-----, RN Coordinator, CWVAS

-----, Homemaker Aide, CWVAS

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

Barbara Plum, RN, West Virginia Medical Institute (WVMI), Department witness

Presiding at the hearing was Eric L. Phillips, 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 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 501.5.1.1(a) and 501.5.1.1 (b)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged and Disabled Home and Community Based Waiver Policy Manual Chapter 501.5.1.1(a) and 501.5.1.1 (b)
- D-2 Pre-Admission Screening dated June 29, 2012
- D-3 Notice of Decision dated July 6, 2012
- D-4 Pre-Admission Screening dated May 24, 2011

Claimant's Exhibits:

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

VII. FINDINGS OF FACT:

- 1) On June 29, 2012, the Claimant was medically assessed to determine his continued eligibility and to assign an appropriate Level of Care (LOC) for participation with the Aged and Disabled Waiver Services (ADW) program. Prior to the re-evaluation, the Claimant was assessed at a Level "C" LOC (Exhibit D-4) (21 points) under the program guidelines.
- 2) Barbara Plum, WVMI assessing nurse, completed the Pre-Admission Screening (PAS) (Exhibit D-2), as part of her medical assessment of the Claimant. Ms. Plum testified that the Claimant was awarded a total of 15 points which resulted in a Level "B" LOC determination.

- 3) On July 6, 2012, the Claimant was issued a Notice of Decision (Exhibit D-3), which documents the approval of his medical eligibility for the ADW program and the reduction of his homemaker service hours which cannot exceed 93 monthly hours.
- 4) The Claimant's representatives contend that additional points should have awarded on the PAS in the areas of bowel and bladder continence, transferring, and wheeling.

The following addresses the contested areas:

Bowel and Bladder Continence-Ms. Plum assessed the Claimant as occasionally incontinent of bladder, continent of the bowel, and awarded one LOC point to the Claimant's PAS. Ms. Plum documented in the PAS the following reported information, "asked many times about accidents with the bowels and bladder. Member reports no accidents with the bowels, occasional accidents with the bladder, not weekly. Does not wear pull ups or incontinence supplies. Nurse with CWVAS stated member wore pull ups, when questioned member he said I do and showed top of regular underwear to nurse, states this is what I call pull ups." The Claimant's representatives contend that the Claimant is totally incontinent of the bowel and bladder and provided a letter from the Claimant's physician dated July 24, 2012 (Exhibit C-1). The physician documents in the exhibit that the Claimant is "incontinent of both bladder and bowel on average 3 times per week." It shall be noted that this exhibit was presented for historical purposes and not made available to the WVMi nurse during her assessment of the Claimant. Testimony indicated that the Claimant's regular Homemaker Aide, -----, was not present at the June 2012 PAS assessment and the Claimant was represented by -----, RN Coordinator with CWVAS. ----- testified that she has provided care for the Claimant over a six year period and he has experienced bowel and bladder incontinence every day. Ms. Plum testified that during the assessment, she along with -----, questioned the Claimant regarding his incontinence and he denied any bowel incontinence or the use of incontinence supplies, but reported occasional urinary incontinence. Ms. Plum testified that at the conclusion of the PAS, she reviewed her findings with the Claimant and ----- and no contradictory information was provided. ----- contended that the Claimant did not understand the questions asked of him during the assessment regarding continence and she attempted to clarify the information with the Claimant at the assessment. Additional testimony indicated that the Claimant did not wear pull ups at the time of the PAS, but has had doctor's orders for incontinence supplies since early June 2012. Testimony indicated that the Claimant refused to wear previously prescribed incontinence supplies because he is more comfortable wearing his regular underwear; however, testimony indicated that the Claimant does utilize pads on furniture, etc.

Transferring-Ms. Plum assessed the Claimant as a Level 2-Supervised or assistive device at the June 2012 assessment. Ms. Plum documented in the PAS that "[Claimant] got up from the wheelchair during the visit with the use of wheelchair. Has a toilet riser and grab bar by toilet to use. Can get self in and out of bed." ----- testified that the Claimant has "good and bad days" and sometimes requires assistance inside and out of his home.

Wheeling-Ms. Plum assessed the Claimant as a Level 2-Wheels Independently at the June 2012 assessment. Ms. Plum documented in the PAS that "[Claimant] has a manual wheelchair, wheeled self in the home, no assistance needed." Ms. Plum testified that she observed the

Claimant wheel independently and he reported no assistance with wheeling. Testimony from the Claimant's Homemaker Aide indicated that the Claimant has "good and bad days" concerning his wheeling and requires assistance in the contested area.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.5.1.1(a) and (b) documents there are 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
- #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- 0-62 range of hours per month
- Level B - 10 points to 17 points-63-93 range of hours per month
- Level C - 18 points to 25 points-94-124 range of hours per month
- Level D - 26 points to 44 points- 125-155 range of hours per month

VIII. CONCLUSIONS OF LAW:

- 1) Medicaid policy stipulates that an individual's LOC is determined by the number of points awarded on the PAS assessment tool.
- 2) On June 29, 2012, the Claimant was awarded a total of 15 LOC points as part of his PAS, which resulted in a Level "B" LOC determination.

- 3) The matter before the Board of Review is whether or not the WVMI nurse correctly assessed the Claimant based on information reported during the assessment.
- 4) A review of evidence and testimony presented during the hearing process concludes that no additional points can be awarded to the PAS in the areas of bladder and bowel incontinence. During the assessment, the Claimant denied the use of incontinence supplies and reported no bowel incontinence; therefore, the assessing nurse was correct to assess the Claimant as continent. Additionally, the Claimant reported occasional bladder incontinence during the assessment; therefore, the WVMI nurse correctly assessed the Claimant as occasionally incontinent.
- 5) A review of evidence and testimony presented during the hearing process concludes that no additional points can be awarded to the PAS in the area of transferring. During the assessment, the WVMI nurse observed the Claimant transfer without assistance and no information was reported to indicate that the Claimant required one-person assistance to aid in his functional ability in the contested area; therefore, the WVMI nurse correctly assessed the Claimant as a Level 2-supervised or assistive device.
- 6) A review of evidence and testimony presented during the hearing process concludes that no additional points can be awarded to the PAS in the area of wheeling. During the assessment, the WVMI nurse observed the Claimant wheel independently and no information was reported to indicate that the Claimant required physical assistance to aid in his functional ability in the contested area; therefore, the WVMI nurse correctly assessed the Claimant as wheeling independently.
- 7) As a result of evidence presented during the hearing process, no additional points may be awarded to the Claimant's PAS. The Claimant's total points are 15. In accordance with existing policy, an individual with 15 points qualifies as a Level B LOC determination and is therefore eligible to receive a maximum of 93 homemaker service hours.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the Department's proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled, Title XIX (HCB) Waiver Services program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ day of September 2012.

Eric L. Phillips
State Hearing Officer