



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

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

January 30, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held December 21, 2011. 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 is based on current policy and regulations. These regulations provide 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 WVMI (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 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

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

IN RE: -----,

Claimant

v.

ACTION NO.: 11-BOR-2315

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondents

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on December 21, 2011 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 a timely appeal, filed October 27, 2011.

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 program entitled Aged/Disabled Waiver (ADW) is administered by the West Virginia Department of Health and Human Resources.

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

-----, Homemaker, Mountain State Home Health

-----, Homemaker, Mountain State Home Health

Kay Ikerd, RN, Bureau of Senior Services (testified by phone)

-----, RN, West Virginia Medical Institute (testified by phone)

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 October 5, 2011
- D-3 Pre-Admission Screening dated November 8, 2010
- D-4 Notice of Decision dated October 17, 2011

VII. FINDINGS OF FACT:

- 1) Claimant was reevaluated for medical eligibility for the ADW program on October 5, 2011. A Pre-Admission Screening (PAS) was completed that date by -----, RN with the West Virginia Medical Institute (WVMI) (D-2).

Claimant received 19 points on the October 2011 PAS, reducing his level of care from Level D to Level C (D-4).

- 2) -----, Claimant's homemaker testified Claimant had started using a wheelchair in the home on a full time basis since the October 2011 assessment. Mr. Blankenship stated Claimant was hospitalized after falling down. ----- stated he physically assists Claimant with walking since his accident to prevent further falls. ----- stated Claimant will become dizzy and fall and needs assistance up from the floor.

----- testified he bathes and dresses Claimant completely as he gets dizzy while bending over. Claimant is also blind in one (1) eye and has glaucoma in the other. ----- stated he administers Claimant's eye drops. ----- stated Claimant cannot afford hearing aids and may not have understood the questions asked of him during the assessment.

- 3) -----, Claimant's homemaker testified Claimant's condition has worsened since he was hospitalized. Claimant "sees" by touch and feels around for things due to his poor vision. ----- stated Claimant has dementia and is very forgetful.

Claimant has flooded his apartment twice by forgetting to turn off the water and will burn things left on the stove.

- 4) -----, RN with WVMI testified to the PAS she completed on Claimant in October 2011. ----- stated she was advised that Claimant did not use a wheelchair in the home nor did she observe one in the home. ----- stated she was told Claimant washed himself in the shower with the exception of his feet. Claimant reported to ----- that he dresses himself with assistance in buttoning his shirts and was able to clean his dentures. ----- stated she observed Claimant administering his own eye drops during the assessment (D-2).

----- stated she could not rate Claimant's hearing as uncorrectable because he did not have hearing aids and she could not determine if Claimant's hearing could be improved. Although Claimant's vision is impaired, Claimant was able to function in his home, with assistance of the homemaker.

- 5) 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 19 points as the result of a PAS completed by WVMi in October 2011 in conjunction with his annual medical evaluation.
- 2) Documentation indicated Claimant was able to participate in dressing, grooming and bathing in October 2011. Because Claimant has the physical ability to participate in these activities, he cannot be rated as total care. Claimant was correctly assessed as a level 2 for dressing, grooming and bathing.
- 3) Testimony provided implied Claimant's health has deteriorated in the months after the assessment. The WVMi nurse must evaluate Claimant based on the information made known to her at the time of the medical evaluation and his abilities during that time period. The WVMi nurse correctly assessed Claimant as no longer requiring level D care based on his circumstances in October 2011.

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 30th day of January 2012

Kristi Logan
State Hearing Officer