



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General

Board of Review
P.O. Box 1736
Romney, WV 26757

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

Earl Ray Tomblin
Governor

March 7, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held March 7, 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 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 Level of Care should be reduced from a level "D" to a level "C" Level of Care.

It is the decision of the State Hearing Officer to Uphold the action 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
PPL

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-540

**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 a timely appeal, filed January 24, 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

-----, Claimant's Attorney-In-Fact

-----, Claimant's witness

Kay Ikerd, RN-Bureau of Senior Services

-----, RN-West Virginia Medical Institute (WVMI)

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 Assessment dated October 11, 2010
- D-3 Pre-Admission Screening Assessment dated January 13, 2012
- D-4 Notice of Decision dated January 24, 2012

VII. FINDINGS OF FACT:

- 1) On January 13, 2012, the Claimant was medically assessed to determine his continued eligibility and to assign an appropriate Level of Care, hereinafter LOC, in participation with the Aged and Disabled Waiver program. Prior to the re-evaluation, the Claimant was assessed at a Level "D" LOC under the program guidelines.
- 2) On January 24, 2012, the Claimant was issued a Notice of Decision, Exhibit D-4. This exhibit noted that the Claimant had been determined medically eligible to continue to receive in-home services under the program guidelines, but his corresponding level of care could not exceed 124 hours per month (LOC "C" determination).
- 3) Ms. -----, West Virginia Medical Institute (WVMI) assessing nurse completed Exhibit D-3, the Pre-Admission Screening assessment, hereinafter PAS, as part of her medical assessment of the Claimant. ----- testified that the Claimant was awarded a total of 24 points during the evaluation, which qualifies for a Level "C" LOC. ----- compared her findings against the Claimant's previously administered assessment of October, 2010 (Exhibit D-2) and indicated that her findings were identical except in the areas of Medical Condition and Symptoms, in which she could not award points in the diagnostic areas for angina at rest and dysphagia. ----- stated that she attempted to obtain clarification of the Claimant's diagnosis of dysphagia with the Claimant's physician, but she received no response to her inquires.

- 4) The Claimant's representatives contend that additional points should have been awarded in the PAS assessment for the diagnoses of dysphagia and angina at rest. Testimony indicated that the Claimant experiences difficulty with swallowing and can become choked. The Claimant's representatives believed that the Claimant's angina (chest pain) is due to his choking. Additionally, the Claimant's representatives noted that they have attempted to obtain information regarding the diagnoses from the Claimant's physician and have received no response to their inquiry. ----- stated that no diagnosis for angina was presented during the assessment and information related during the assessment revealed that the Claimant had not experienced any angina at rest or exertion since a stent was inserted in 2005. Additionally, ----- indicated that no diagnosis of dysphagia was related during the assessment and documented her findings as, "the client coughs when he drinks and eats; the esophagus is narrowing, upon dx upper GI, per [REDACTED] No dx/rx. Unable to confirm." ----- indicated that she attempted to clarify the diagnosis of dysphagia, but did not receive a response from the Claimant's physician.

Policy requires that one point is awarded for each Medical Conditions and Symptoms when the diagnosis is based on medical evidence presented by the appropriate medical professionals. Whereas, the assessing nurse cannot render medical diagnoses and no diagnoses were presented from the Claimant's physician to support the presence of angina and dysphagia, the assessing nurse was correct in her assessment and additional points cannot be awarded in the contested areas.

- 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

- 6) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.5.1.3 F documents:

Nurses shall not render medical diagnoses. In those cases where there is a medical diagnosis question, the decision shall be based on medical evidence presented by appropriate medical professionals.

VIII. CONCLUSIONS OF LAW:

- 1) Medicaid policy stipulates that an individual's Level of Care (LOC) is determined by the number of points awarded on the Pre-Admission Screening (PAS) assessment tool.
- 2) On January 13, 2012, the Claimant was assessed a total of 24 points as part of his PAS assessment completed by West Virginia Medical Institute.
- 3) As a result of evidence and testimony presented during the hearing process, no additional points may be awarded. The Claimant's total points remain at 24.
- 4) In accordance with existing policy, an individual with 24 points qualifies as a Level "C" LOC and is therefore eligible to receive a maximum of 124 monthly hours of homemaker services.

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 _____ day of March, 2012.

**Eric L. Phillips
State Hearing Officer**