



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 21, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held March 21, 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 "C" to a level "B" 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
CWVAS

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-633

**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 26, 2012.

It should be noted 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
-----, RN-Central West Virginia Aging Services (CWVAS)
-----, Homemaker Aide- [REDACTED] County Senior Services
-----, Case Manager- [REDACTED] West Virginia Aging Services (WVAS)
Kay Ikerd, RN-Bureau of Senior Services (BoSS)
-----, 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 dated December 7, 2011
- D-3 Notice of Decision dated January 24, 2012
- D-4 Prescription pad note from Russell Stewart, D.O.

VII. FINDINGS OF FACT:

- 1) On December 7, 2011, 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 "C" LOC under the program guidelines.
- 2) On January 24, 2012, the Claimant was issued a Notice of Decision, Exhibit D-3. 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 93 hours per month (LOC "B" determination).
- 3) Ms. -----, West Virginia Medical Institute (WVMI) assessing nurse completed Exhibit D-2, 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 17 points during the evaluation, which qualifies for a Level "B" LOC.
- 4) The Claimant and his representatives contend that additional points should have been awarded for the diagnosis of dyspnea and dysphagia. ██████████ testified that during the assessment the Claimant indicated difficulties in the contested areas and she sought additional information with his physician. ██████████ documented the following in the PAS assessment concerning her correspondence with the physician:

- 12-8-11 Faxed Letter to [REDACTED] requesting confirmation of DX of Dyspnea, Dysphagia, expressive aphasia, and depression.
- 12-21-11 Received call from -----HM RN with [REDACTED] Senior Services. She was concerned about whether I received additional information from [REDACTED] as requested. I advised her that I received the letter back unsigned with something written on the cover sheet that I could not interpret electronically. She was going to attempt to contact [REDACTED] to confirm diagnoses and forward any additional information.
- 12-23-11 Reviewed hard copy of additional information received back from [REDACTED]. The copy of cover sheet which accompanied my additional information request letter had the words “no thanks” written on it. There was no signature but it appears to be written in [REDACTED] handwriting. The copy of my letter with diagnoses requested was left blank with no comments [sic] or signature. I attempted to call [REDACTED] office but it is closed today. Will call back next week.
- 12-30-11 Spoke with -----HM RN with BSS and she noted that Pt. had Dx of left shoulder pain on referral which was overlooked by me. DX of pain added to PAS. She also states she spoke with [REDACTED] in [REDACTED] office and he does not agree with the additional dx requested by me. She also states that she sent a letter of request to [REDACTED] and he did not agree with the dx. However, she has spoken with [REDACTED] nurse. He is a surgeon whom member has recently seen regarding his difficulty swallowing. She states that [REDACTED] will send Rx with Dx next week when he returns from vacation.

Ms. Kay Ikerd, RN-Bureau of Senior Services presented Exhibit D-4, Prescription pad note from [REDACTED] D.O. It shall be noted that this exhibit was received by the Board of Review on March 8, 2012 from -----, RN as submission of evidence for this hearing. The exhibit documents the Claimant’s diagnoses of dyspnea and dysphagia and was dated January 3, 2011. [REDACTED] indicated that this information was considered late and not considered for the December, 2011 assessment because the information was not received within the appropriate timeframe that additional information could have been accepted. ----- indicated that the Claimant visited his physician on January 3, 2012 and received the prescription pad note on the same date; however, the physician erroneously entered January 3, 2011 and that the date should have been January 3, 2012. ----- indicated that she submitted the information by facsimile transfer to [REDACTED] after she received it from the Claimant; however, due to a transmission error, the information was not sent electronically. Ms. Ikerd testified that the Claimant completed a prior assessment in January, 2011 and the information submitted on the prescription pad note could not be considered for the December, 2011 assessment due to the erroneous date.

Policy requires that assessing nurses cannot render a medical diagnosis. When a medical diagnosis is questioned, the decision must be based on medical evidence presented by the appropriate medical professionals. The assessing nurse could not confirm related diagnoses with the Claimant's physician and the Claimant's representative's attempts to provide the information failed due to clerical error. The matter before the Board of Review is whether or not the assessing nurse correctly assessed the Claimant based on information known at the time of the assessment. Because the assessing nurse did not receive confirmation of the diagnoses in question, the assessment of the Claimant's medical conditions and symptoms is correct and additional points cannot be awarded.

- 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 December 7, 2011, the Claimant was assessed a total of 17 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 17.
- 4) In accordance with existing policy, an individual with 17 points qualifies as a Level "B" LOC and is therefore eligible to receive a maximum of 93 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