



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

May 30, 2012

Dear ----- :

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held May 23, 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 Level of Care 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

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

IN RE: ----- ,

Claimant,

v.

ACTION NO.: 12-BOR-964

**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 May 23, 2012, on a timely appeal, filed March 1, 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's Attorney-In-Fact
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 State 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 February 6, 2012
- D-3 Notice of Decision dated February 16, 2012
- D-4 Pre-Admission Screening dated January 19, 2011

VII. FINDINGS OF FACT:

- 1) On February 6, 2012, the Claimant was medically assessed to determine her continued eligibility and to assign an appropriate Level of Care (LOC) in participation with the Aged and Disabled Waiver Services program. Prior to the re-evaluation, the Claimant was assessed at a Level "C" LOC under the program guidelines.
- 2) Barbara Plum, West Virginia Medical Institute (WVMI) assessing nurse, completed Exhibit D-2, the Pre-Admission Screening (PAS) assessment, as part of her medical assessment of the Claimant. Ms. Plum testified that the Claimant was awarded a total of 15 points (Level "B" determination) and compared her findings to the Claimant's previous 2011 PAS assessment (19 points) (Exhibit D-4).
- 3) On February 16, 2012, the Claimant was issued Exhibit D-3, Notice of Decision, which documents that the Claimant had been determined medically eligible to continue to receive in-home services under the program guidelines, but at a reduced level of monthly budgeted homemaker services. These services were reduced to a level "B" (Monthly Personal Options Service Limits \$1,379.62).

- 4) -----, Claimant's Attorney-In-Fact and daughter, contends that additional points should have been awarded in the areas of bladder incontinence, orientation, and the diagnosis of mental disorders.

The following addresses the contested areas:

Bladder Incontinence----- indicated that her mother experiences accidents of the bladder around three times per month. Kay Ikerd, RN, Bureau of Senior Services, testified that points are awarded in the area of incontinence when the individual experiences three or more accidents of the bowel or bladder per week. Ms. Plum documented in the PAS assessment that the Claimant denied any accidents of the bladder. Ms. Plum indicated that the Claimant's granddaughter was present during the assessment and did not contradict the Claimant's statements during the assessment.

Policy requires that points are assessed in the area of incontinence when the individual is assessed at a Level 2 or higher, meaning the individual experiences three or more accidents of the bowel or bladder on a weekly basis.

Orientation----- indicated that her mother experiences disorientation, but her episodes are "not that often" with the majority of her disorientation occurring at night. Ms. Plum documented in the PAS assessment that the Claimant was "oriented to person, place and time and denies any disorientation."

Policy requires that points are assessed in the area of orientation when the individual is assessed at a Level 2 or higher, meaning the individual experiences intermittent or total disorientation.

Mental Disorders----- indicated that her mother is prescribed Risperdal for her bipolar disorder. Ms. Plum documented the Claimant's use of Risperdal on the PAS assessment and awarded the Claimant one point for Mental Disorders under the Medical Conditions and Symptoms due to the Claimant's diagnosis of chronic depression. The Claimant received a total of six points under this portion of the PAS.

Policy requires that points are assessed in the area of Medical Conditions and Symptoms when the individual has been diagnosed or prescribed medications for the condition or symptom.

- 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 LOC is determined by the number of points awarded on the PAS assessment tool.
- 2) On February 6, 2012, the Claimant was assessed a total of 15 (Level B determination) points as part of her PAS assessment completed by WVMi.
- 3) During the assessment, the Claimant denied any accidents of bladder and no information was provided to the assessing nurse to indicate that the Claimant experienced bladder incontinence. Testimony revealed that the Claimant experiences infrequent episodes of bladder incontinence. Based on information provided during the assessment, the assessing nurse correctly assessed the Claimant's bladder incontinence. Therefore, an additional point in the area of bladder incontinence cannot be awarded.

- 4) During the assessment, the Claimant was oriented to person, place, and time and denied any disorientation. Testimony revealed that the Claimant occasionally experiences disorientation, mostly at night. Based on the information provided during the assessment, the assessing nurse correctly assessed the Claimant's orientation and an additional point in the contested area cannot be awarded.
- 5) The Claimant received a point for Mental Disorders under the Medical Condition and Symptoms portion of the PAS assessment. Policy requires that one point can be awarded for each symptom. Because the Claimant received the maximum points allowed for Mental Disorders, an additional point cannot be awarded.
- 6) As a result of evidence and testimony presented during the hearing process, no additional points may be awarded and the Claimant's total points remain at 15. In accordance with existing policy, an individual with 15 points qualifies as a Level "B" LOC and is therefore eligible to receive a maximum of 93 monthly hours or \$1379.62 monthly budget of homemaker services.

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 May 2012.

Eric L. Phillips
State Hearing Officer