



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

May 24, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held May 22, 2012. 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 C to Level B 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 program is based on current policy and regulations. These regulations state 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 WVMH (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 C care.

It is the decision of the State Hearing Officer to **Uphold** the proposal of the Department to reduce your homemaker hours to Level B 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
[REDACTED] County Commission on Aging

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-994

**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 ----- held on May 22, 2012. 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 March 20, 2012.

It should be noted here that the Claimant's benefits under the Aged/Disabled Waiver program have continued at Level C care pending a decision.

II. PROGRAM PURPOSE:

The Aged/Disabled Waiver (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:

-----, Case Manager, [REDACTED] County Commission on Aging
-----, Homemaker RN, [REDACTED] County Commission on Aging
-----, Witness for Claimant

Kay Ikerd, RN, Bureau of Senior Services
Brenda Myers, RN, West Virginia Medical Institute

Presiding at the hearing was Kristi Logan, State Hearing Officer and a member of the Board of Review.

All participants testified by phone.

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 March 5, 2012
- D-3 Notice of Decision dated March 14, 2012
- D-4 Pre-Admission Screening dated March 8, 2012
- D-5 Correspondence from ----- dated May 16, 2012

VII. FINDINGS OF FACT:

- 1) Claimant was reevaluated for medical eligibility for the ADW program on March 5, 2012. A Pre-Admission Screening (PAS) was completed that date by Brenda Myers, RN with the West Virginia Medical Institute (WVMI) (D-2).

Claimant received 16 points on the March 2012, PAS, reducing his level of care from Level C to Level B (D-3).

- 2) The Department conceded that Claimant should have been given a point under Medical Conditions/Symptoms for mental disorder, due to his use of the drug Mirtazapine that was prescribed to treat depression (D-2). Claimant will be awarded one (1) additional point on the March 2012 PAS.
- 3) -----, Case Manager with [REDACTED] County Commission on Aging, testified Claimant should have been given a point under Medical Conditions/Symptoms for pain. Claimant is prescribed Lortab and Dolgic Plus, but at the time of the assessment in March 2012, he was out of both medications and did not have empty bottles to present to the WVMI nurse. ----- stated their case management agency's assessment notes indicate Claimant has been prescribed Lortab and Dolgic Plus continuously since the previous year's PAS (D-4).
- 4) -----, Claimant's wife, testified that she advised the WVMI nurse that Claimant was taking Lortab, but that he was currently out of the medication. ----- stated Claimant did

not have a doctor's appointment until after the assessment and did not have anything to verify the medication.

- 5) Brenda Myers, RN with WVMI, testified to the PAS completed for Claimant in March 2012. Ms. Myers stated she did not recall anyone telling her that Claimant experienced pain or that he had prescription pain medications. Ms. Myers referred to her notes on the PAS regarding pain which read (D-2):

Pain: No dx [diagnosis] and no use of rx meds [prescription medications] for pain

Ms. Myers stated she sent a request to Claimant's physician to verify diagnoses of paralysis and anxiety after the assessment. Ms. Myers felt if pain was discussed during the assessment, she would have requested verification of a pain diagnosis as well (D-2).

- 6) 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 16 points as the result of a PAS completed by WVMI in March 2012 in conjunction with his annual medical evaluation.
- 2) The Department conceded Claimant should have received a point for mental disorder under Medical Conditions/Symptoms. Claimant's March 2012 PAS will be updated to reflect the addition of one (1) point for mental disorder.
- 3) The documentation presented failed to establish that Claimant and his representatives failed to advise the WVMI nurse that Claimant had pain. The WVMI nurse verified with Claimant's physician a diagnosis of paralysis, of which there was no diagnosis at the time of the assessment, following the medical evaluation and her testimony that had she been aware of Claimant's assertion of pain, she would have requested a diagnosis of that condition as well is credible.
- 4) Based on the information provided, Claimant no longer meets the medical criteria required to continue receiving Level C care.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to reduce Claimant's Level of Care through the Aged/Disabled Waiver program to Level B care. One (1) additional point will be awarded in the area of mental disorder.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 24th day of May 2012

Kristi Logan
State Hearing Officer