



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

June 9, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 27, 2010. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker hours 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 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 § 501.3).

The information submitted at your hearing revealed that your homemaker hours were correctly reduced to Level B care based on the information provided during the assessment.

It is the decision of the State Hearing Officer to **Uphold** the proposal of the Department to reduce your homemaker hours from Level C to Level B care.

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Bureau of Senior Services
[REDACTED]
West Virginia Medical Institute

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

-----,

Claimant,

v.

Action Number: 10-BOR-1045

**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 concluded on May 27, 2010 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.

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 Program entitled Aged/Disabled Waiver (ADW) is administered by the West Virginia Department of Health & 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

-----, RN, Case Manager, [REDACTED]

-----, RN, [REDACTED]

-----, Homemaker, [REDACTED]

Brian Holstein, Bureau of Senior Services (testified by phone)
Teena Testa, 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.

This hearing was held by videoconference.

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 Home and Community Based Waiver Policy Manual § 501.3.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community Based Waiver Policy Manual § 501.3.2
- D-2 Pre-Admission Screening Form dated February 22, 2010

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Claimant was reevaluated for medical eligibility for the ADW program on February 22, 2010. A Pre-Admission Screening Form (PAS) was completed that date by Teena Testa, RN of the West Virginia Medical Institute (WVMI) (D-2). Present at the assessment was Claimant and her son, -----.

Claimant received a total of 14 points on the PAS and her homemaker hours were reduced to 93 hours a month, or Level B care (D-2).

- 2) The Department conceded to awarding an additional point under medical conditions and an additional point under incontinence that were previously omitted. Claimant's total points for the February 2010 PAS was 16 points. With the addition of two (2) points, Claimant remained at a Level B care.
- 3) -----, Claimant's case manager, testified they were contesting Claimant not receiving points for arthritis, bowel incontinence, eating and communication. ----- stated Claimant

has had osteoarthritis for years and has always received a point for the condition in the past. ----- stated Claimant is unable to take medications for arthritis due to her stomach condition. ----- stated Claimant is unable to cut her foods due to carpal tunnel syndrome.

----- testified Claimant cannot hear well despite the use of hearing aids. She stated Claimant's inability to hear hinders her communication. ----- stated Claimant's son gave the assessing nurse incorrect information regarding her medical conditions and functional abilities.

- 4) -----, Claimant's homemaker testified that Claimant has had bowel incontinence at least three (3) times a week for over a year. Ms. [REDACTED] stated she cuts Claimant's foods up for her during meal preparation.

----- stated that although Claimant's son resides with her, he is not her caregiver and does not have knowledge of her abilities. ----- was not present during the assessment as it was scheduled on her day off.

- 5) Teena Testa, RN with WVMI, testified to the PAS she completed for Claimant. Ms. Testa stated Claimant's son advised her that his mother was able to feed herself after the homemaker prepares her meals and cut up her own foods. [REDACTED] also stated Claimant had bowel accidents only 1-2 times a week.

Ms. Testa stated that when she arrived at Claimant's house for the assessment, Mr. Lincoln was not home. Ms. Testa stated she and Claimant conversed with one another until he arrived. Ms. Testa stated they sat beside each other and although Ms. Testa did have to speak loudly to Claimant, Claimant was able to answer questions and carry on a conversation.

Ms. Testa stated she went over the answers that were given at the end of the assessment and the diagnoses that were provided by Claimant's physician. Ms. Testa stated Claimant and [REDACTED] were in agreement with the assessment and she had no reason to doubt the information that was provided to her.

- 6) Aged/Disabled Home and Community Based Waiver Policy Manual § 501.3.2.1 and 501.3.2.2 states:

There will be 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- Decubitis- 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

#34- 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. The Claimant was awarded 16 points as the result of a PAS completed by WVMi in February 2010.
- 2) Claimant did not have a diagnosis of arthritis nor was she taking any medication for arthritis. The assessing nurse cannot award a point for a medical condition without a diagnosis from a medical practitioner.
- 3) There was insufficient information provided regarding Claimant's inability to communicate. Testimony by the assessing nurse revealed Claimant was able to answer questions appropriately during the assessment. No additional points can be awarded for communication.
- 4) The testimony provided indicated a discrepancy in the information given to the assessing nurse by Claimant's son and her actual conditions. Claimant's son denied Claimant needing assistance in eating and reported that her bowel incontinence was 1-2 times a week. However, the matter before the Board of Review is whether or not the assessment completed by the assessing nurse in February 2010 was accurate based on the information known at the time [emphasis added]. None of the disputed areas were contested in the two-week period following the Notice of Potential Denial. Witnesses testifying on behalf of the Claimant agree that inaccurate information was provided to the assessing nurse, yet nothing was done to correct the alleged inaccuracies during the assessment process. Ultimately, it is the responsibility of the Claimant and her representatives to provide accurate information at the time of the assessment, and not

the responsibility of the Hearing Officer to reassess the Claimant's functional abilities with new information that was not made available to the assessing nurse.

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 B care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 9th day of June 2010.

**Kristi Logan
State Hearing Officer
Member, Board of Review**