



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

Joe Manchin III
Governor

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

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

July 12, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 29, 2010. 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 is determined based on the Level of Care (LOC). The Level of Care is determined by evaluation 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 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. As a result, you are eligible to receive 3 hours per day or 93 hours per month of homemaker services..

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, RN, BoSS

WVMi

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

-----,

Claimant,

v.

Action Number: 10-BOR-1236

**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 June 29, 2010 on a timely appeal, filed April 26, 2010.

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 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]

-----, RN, [REDACTED]

Brian Holstein, Program Manager, Bureau of Senior Services (BoSS)

Melissa Bell, 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 501.3.2.1 and Chapter 501.3.2.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged and Disabled Home and Community Based Waiver Policy Manual, § 501.3.2.1-501.3.2.2
- D-2 Pre-Admission Screening assessment dated March 31, 2010

VII. FINDINGS OF FACT:

- 1) On March 31, 2010, 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 (ADW) Program. Prior to the reevaluation, the Claimant was assessed at a Level "C" LOC under the program guidelines.
- 2) On April 7, 2010, the Claimant was notified that he had been determined medically eligible to continue to receive in-home services under the program guidelines but his corresponding level of care would be reduced to ninety-three (93) hours per month (LOC "B" determination).
- 3) Melissa Bell, RN, West Virginia Medical Institute (WVMI) assessing nurse completed Exhibit D-2, the Pre-Admission Screening assessment, as part of her medical assessment of the Claimant. Ms. Bell testified that the Claimant was awarded total of fifteen (15) points during the evaluation. The Claimant was awarded points in the following areas of the PAS assessment:

- Dyspnea – 1 point
- Arthritis – 1 point
- Pain – 1 point
- Mental Disorder – 1 point
- Other diagnosis (Hypertension) – 1 point
- Vacating during an emergency – 1 point
- Bathing – 1 point
- Dressing – 1 pint
- Grooming – 1 point
- Bladder Incontinence – 1point

Transferring – 1 point
Walking – 1 point
Professional and Technical Care Needs (continuous oxygen) – 1 point
Medication Administration – 1 point
Prognosis – 1 point

Ms. Bell testified that the Claimant related issues concerning a diagnosis of osteoarthritis. Ms. Bell testified that she confirmed the diagnosis with the Claimant's physician and adjusted her findings in the PAS assessment (Exhibit D-2), awarding points to reflect the physician's diagnosis.

- 4) The Claimant's representatives contend that additional points should have been awarded in the areas of wheeling, professional and technical needs, and bladder incontinence.

The following address the contested areas:

Wheeling- -----, Case Manger, [REDACTED] testified that the Claimant utilizes a wheelchair independently in his home and has no difficulties when wheeling in his living room or bedroom. -----testified that the Claimant requires occasional assistance when maneuvering to the deck of his home or when traveling outside of the home. Brian Holstein, Program Manager, Bureau of Senior Services, stated that the assessing nurse must evaluate the individual based on their functional abilities in the home and points cannot be awarded for any difficulties the individual experiences outside of the home.

Testimony revealed that the Claimant wheels independently in his home requiring occasional assistance when maneuvering to the deck of his home and only experiences difficulties when traveling outside of the home. Policy dictates that the assessment is based on the functional abilities of the individual in the home and points are assessed to those abilities. Testimony did not indicate frequent assistance in the contested area; therefore additional points **cannot** be awarded.

Professional and Technical Care Needs-----, RN, [REDACTED] testified that the Claimant suffers from a skin condition which requires a prescribed sunscreen. Testimony indicated that the Claimant requires assistance in applying the medication on his face when he travels outside the home to his numerous medical appointments. Mr. Holstein indicated that points are limited to continuous oxygen in the Professional and Technical Care Needs portion of the PAS assessment. Mr. Holstein indicated that skin care does not qualify for the assessment of points under the documented policy.

Testimony revealed that the Claimant requires assistance with skin care to place protective sunscreen on his face. Policy stipulates that points are limited to continuous oxygen in the Professional and Technical Care Needs portion of the PAS assessment, therefore additional points **cannot** be awarded for skin care in the contested area.

Bladder Incontinence [REDACTED] testified that during the week of the assessment the Claimant experienced one episode of bladder incontinence. [REDACTED] indicated that the Claimant normally experiences four or five episodes of bladder incontinence week. Ms. Bell documented in the PAS assessment that the member reported one accident of bladder

incontinence in the week prior to assessment. Additionally, it was noted that the Claimant wore protective undergarments to aide with that episode.

Testimony revealed that the Claimant reported one occurrence of bladder incontinence in the week prior to the assessment and failed to relate any other difficulties concerning such incontinence. The assessing nurse acts strictly upon information related during the assessment process and correctly assessed the Claimant with the information that was relayed at the time of the assessment. The Claimant did not indicate frequent episodes of bladder incontinence during the assessment, therefore additional points **cannot** be awarded in the contested area.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2.1 and 501.3.2.2: 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 - 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
- #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) Medicaid policy dictates 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 25, 2010, the Claimant was assessed a total of fifteen (15) 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. Total points awarded to the Claimant stand at fifteen (15).
- 4) In accordance with existing policy, an individual with fifteen (15) points qualifies as a Level "B" LOC and is therefore eligible to receive 3 hours per day or 93 hours per month of homemaker services.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the Agency's proposal to reduce the Claimant 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 July 2010.

**Eric L. Phillips
State Hearing Officer**