



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

August 26, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 25, 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 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 WVMH (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 not be reduced from a level "D" to a level "C" Level of Care. As a result, you are eligible to receive 5 hours per day or 155 hours per month of homemaker services.

It is the decision of the State Hearing Officer to Reverse 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

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

-----,

Claimant,

v.

Action Number: 10-BOR-1566

**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 August 25, 2010 on a timely appeal, filed July 7, 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:

-----, Claimant

-----, Claimant's representative

Kay Ikerd, RN, Bureau of Senior Services (BoSS)

Jamie Morgan, 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 Chapter 501.3.2.1 and Chapter 501.3.2.2
- D-2 Pre-Admission Screening assessment dated June 23, 2010
- D-3 Notice of Decision dated June 24, 2010

VII. FINDINGS OF FACT:

- 1) On June 23, 2010, the Claimant was medically assessed to determine her 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 re-evaluation, the Claimant was assessed at a Level "D" LOC under the program guidelines.
- 2) On June 24, 2010, 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 her corresponding Level of Care would be reduced to 124 hours per month (LOC "C" determination).
- 3) Jamie Morgan, West Virginia Medical Institute (WVMI) assessing nurse completed Exhibit D-2, Pre Admission Screening assessment, as part of her medical assessment of the Claimant. Ms. Morgan testified that the Claimant was awarded a total of 25 points during the corresponding evaluation.
- 4) -----, Claimant's representative contends that additional points should be awarded in the areas of bladder incontinence, bowel incontinence, and decubitus.

The following address the contested areas:

Decubitus-----stated that the Claimant normally carries a "stage one" decubitus or reddened area on her coccyx. Since the assessment, the Claimant's decubitus has elevated to break the skin at the infected area. The Claimant's representative admits no breakage in the skin around the decubitus existed at the time of the assessment. -----contends that her mother may have

been confused as to what constituted as a decubitus when she was relating information during the assessment. Ms. Ikerd contends that the assessing nurse can only make her assessment based on observations and information relayed at the time of the assessment. The assessing nurse documented in the PAS assessment that the Claimant did not suffer from any form of a decubitus at the time of the evaluation.

Testimony revealed that the Claimant did not indicate decubitus ulcers to the assessing nurse at the time of the assessment. Testimony concerning decubitus symptoms occurred upon the conclusion of the assessment and is not a reflection of the Claimant's condition at the time of the assessment. The assessing nurse can only evaluate information reported at the time of such assessment. As information concerning any decubitus ulcer was not related at the time of the assessment, additional points **cannot** be awarded in the contested area.

Bladder Incontinence – -----explained that the Claimant has a catheter to assist with her bladder incontinence. Testimony indicated that the Claimant suffers from constant leakage around the catheter and urethra more than three times a week. -----stated that the tubing for the catheter may become dislodged or leak contributing to the bladder incontinence. Additionally, the Claimant experiences spasms which contribute the loosening of the catheter resulting in urine leakage. -----explained that her mother has had a catheter in place for the last three years and experiences leakage on a frequent basis, at times occurring on multiple occasions per day. Ms. Ikerd noted that individuals who require the use of a catheter are assessed at a Level 4, which awards one point to the Level of Care. Ms. Ikerd testified that the individual may be considered incontinent and awarded two points during the assessment when they experience catheter leakage three or more times a week.

Testimony indicated that additional points may be awarded in the area of bladder incontinence when an individual experiences leakage associated with the use of a catheter. The Claimant's representative testified that the Claimant has experienced leakage around the catheter, as well as with the catheter tubing for the last three years and such leakage continues to this date. Based on information provided concerning the contested area, leakage occurs on a frequent basis more than three times a week; therefore an additional point **may be** awarded in the area of bladder incontinence.

Bowel Incontinence-----testified that her mother has been placed on a bowel regimen as she cannot experience a bowel movement on her own accord. The Claimant must be stimulated to assist with necessary bowel movements. -----testified that the Claimant utilizes suppositories and a bedside commode at least three times a week. -----purported that without the stimulation and bowel regimen, the Claimant would be incontinent due to the lack of control over her bowel. Ms. Ikerd noted that since the Claimant's participates in a bowel regimen, she does not experience any incontinence or accidents and she would not meet the requirements for bowel incontinence. Ms. Morgan noted in the PAS assessment that the Claimant reported occasional loss of bowel control in which she utilized protective undergarments.

Testimony on behalf of the Claimant indicated bowel incontinence only when the Claimant fails to utilize a bowel regimen. -----indicated that the Claimant's participation with a bowel regimen enables the Claimant to use a bedside commode three times per week. While utilizing a bowel regimen, the Claimant does not experience a loss of bowel control three or more times and cannot be considered bowel incontinent, therefore an additional point **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 June 23, 2010, the Claimant was assessed a total of 25 points as part of her PAS assessment completed by the West Virginia Medical Institute.
- 3) As a result of evidence and testimony presented during the hearing process, one additional point may be awarded in the area of bladder incontinence. Total points awarded to the Claimant are 26.

- 4) In accordance with existing policy, an individual with 26 points qualifies as a Level "D" LOC and is therefore eligible to receive 5 hours per day or 155 hours per month of homemaker services.

IX. DECISION:

It is the decision of the State Hearing Officer to reverse 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 August 2010.

**Eric L. Phillips
State Hearing Officer**