



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

January 19, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 19, 2010. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your level of care hours from a level "C" Level of Care to a level "B" Level of 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 and Disabled Wavier 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 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 "C" to a level "B" Level of Care. As a result you remain eligible to receive 4 hours per day/124 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 Title XIX, (HCB) Waiver Services program.

Sincerely,

Eric Phillips
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Kay Ikerd, RN, BoSS
[REDACTED]

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

-----,

Claimant,

v.

Action Number: 09-BOR-2184

**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 January 19, 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. This fair hearing was convened on January 14, 2010 on a timely appeal, filed November 3, 2009.

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 Program entitled Aged and Disabled Waiver program (ADW) is administered by the West Virginia Department of Health & Human Resources. The ADW program is defined as a long-term care alternative that provide 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

-----, Case Manager, 

Cecilia Brown, BoSS

Paula Clark, RN, 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 correctly assessed a reduction in the Level of Care homemaker service hours for the Claimant from a Level “C” to a Level “B” Level of Care.

V. APPLICABLE POLICY:

Aged/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, Section 501.3.2.1-501.3.2.2.
- D-2 Pre-Admission Screening Assessment dated October 19, 2009.
- D-3 Notice of Decision dated November 5, 2009
- D-4a Physician Statement from [REDACTED] M.D.
- D-4b Statement from -----, Claimant

VII. FINDINGS OF FACT:

- 1) On October 19, 2009, 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 reevaluation, the Claimant was assessed at a Level “C” LOC under the program guidelines.
- 2) On November 5, 2009, the Claimant received 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 ninety-three (93) hours per month (LOC “B” determination).
- 3) The West Virginia Medical Institute (WVMI) nurse completed Exhibit D-2, the Pre-Admission Screening, as part of her medical assessment of the Claimant. The WVMI nurse testified that the Claimant was awarded a total of seventeen (17) points during the evaluation. The Claimant was awarded the following points as part of the assessment:

- Significant Arthritis-1 point
- Pain-1 point
- Mental Disorders (Depression)-1 point
- Other (Peripheral Neuropathy)-1 point
- Vacating-1 point
- Eating-1 point
- Bathing-1 point

Dressing-1 point
Grooming-1 point
Incontinence (Bladder)-2 points
Transferring-1 point
Walking-2 points
Wheeling-2 points
Medication Administration-1 point

According to Medicaid policy, the assessed points correspond with a LOC rating of Level B (10-17 points); in turn the Claimant is eligible to receive three (3) hours of homemaker services per day or ninety-three (93) hours of services per month.

- 4) The Claimant and her representative contend that additional points should have been awarded in the areas of walking and the medical condition of contractures.

Walking-The Claimant stated during the assessment that she had not walked for six or seven years. The Claimant testified that she requires two people to assist her in walking and those individuals must be able to lift a certain weight. The WVMi testified that the Claimant's evaluation of her ability to walk was assessed at the same level as wheeling and that the individual was given the maximum number of points (2 points.)

The Claimant received the maximum number of points which can be awarded in the area of walking; therefore additional points **cannot** be awarded in the area of walking.

Contractures-The Claimant testified that she suffers from severe contractures. -----, Case Manager, [REDACTED] testified that she tried to assist in the evaluation process by obtaining information from the Claimant's physician to establish contractures in the PAS assessment. -----testified that she took information from the Claimant's previous assessment and forwarded it on to the Claimant's physician for approval. -----submitted to Paula Clark, the reviewing WVMi nurse, Exhibit D-4a, Physician Statement from [REDACTED] This exhibit documents in pertinent part:

Dear Dr. [REDACTED]

Your patient, -----, was assessed by WVMi on October 19, 2009. Her level of care for her services with the Aged and Disabled Waiver Program has been reduced to a Level B (93 hours monthly) due to not enough information for the RN to identify enough deficits to maintain her previous level of care (124 hour monthly).

-----, experiences shortness of breath with exertion and has foot contractions. (It shall be noted that this area of the exhibit is check marked by a corresponding box)

Patient Diagnosis: Periphrial [sic] Neuropathy, HTN, Depression, LBP, OCD, DM.

This information was supplied to the WVMi assessing nurse on letterhead from [REDACTED] [REDACTED] on November 4, 2009, and was signed by the Claimant's physician on

November 3, 2009. -----stated that she previously attempted to obtain the information from the Claimant's physician but the physician failed to provide the necessary paperwork. She stated that she provided the information to the physician for completion and forwarded the information to the assessing nurse after she obtained the physician's signature. -----stated that she was unaware that the information had to be provided on the physician's office letterhead for consideration. Paula Clark, WVMI assessing nurse, testified that the Claimant informed her of ankle and toe contractures and that she attempted to obtain the information from the Claimant's physician on October 19, 2009. Ms. Clark documented in the PAS assessment, Exhibit D-2, that she faxed the physician's office to confirm the diagnosis of the contracture of the ankles and toes. Ms. Clark testified that she did receive the additional information submitted regarding the contractures but was unable to consider this information as it is on the homemaker agencies letterhead. Ms. Clark stated that information submitted must be provided on the physician's letterhead and should be submitted in a two week timeframe.

In her efforts to expedite the confirmation of the diagnosis of contractures for the Claimant, the Case Manger prepared a form that listed the Claimant's diagnosis along with any additional medical conditions. This document appears credible as the Claimant's physician has signed the document citing that the Claimant experiences shortness of breath and foot contractions. Medicaid policy does not require that the physician's documentations of conditions or diagnosis be submitted on the physician's letterhead or prescription pad. Policy also does not establish a timeline in which additional information regarding an individual's LOC maybe submitted to the reviewing nurse. The documentation in question was submitted to the reviewing nurse via fax transmission on November 4, 2009 and a Notice of Decision, Exhibit D-3, was issued to the Claimant on November 5, 2009. Testimony along with the documentation provided indicate that the diagnosis of contracture exists therefore an additional point **can be** awarded in the area of contractures.

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 October 19, 2009, the Claimant was assessed a total of 17 points as part of her PAS assessment completed by 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 diagnosis of contractures. The Claimant was previously awarded seventeen (17) points as part of her October 19, 2009 assessment. Total points awarded to the Claimant stand at eighteen (18).
- 4) In accordance with existing policy, an individual with eighteen (18) points qualifies as a Level "C" LOC and is therefore eligible to receive four (4) hours per day or one-hundred twenty four 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 from a Level "C" to a Level "B" LOC 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 January 2009.

Eric L. Phillips
State Hearing Officer