



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Patsy Hardy, FACHE, MSN, MBA
Cabinet Secretary

April 20, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 4, 2010. Your hearing request was based on the Department of Health and Human Resources' determination of homemaker hours under the Aged and Disabled Waiver 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.

The Aged and Disabled Waiver (ADW) Program is based on current policy and regulations. One of these regulations specifies that for the ADW Program the number of homemaker service hours is determined based on the level of care. The level of care is determined by evaluating the Pre-Admission Screening (PAS) form and assigning points to documented medical conditions that require nursing services. Program services are limited to a maximum number of units and hours, which is reviewed and approved by the West Virginia Medical Institute. (Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2.1; §501.3.2.2)

The information submitted at the hearing revealed that the Department was correct in its determination of your level of care and corresponding homemaker hours.

It is the decision of the State Hearing Officer to **uphold** the Department's determination of homemaker hours under the Aged and Disabled Waiver Program.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, BoSS
Paula Clark, WVMI

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

-----,

Claimant,

v.

Action Number: 09-BOR-2219

**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 April 20, 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 March 4, 2010 on a timely appeal, filed November 12, 2009.

It should be noted that benefits have been continued by the Department.

All persons offering testimony were placed under oath.

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's witness
Kay Ikerd, RN, Department Representative
Paula Clark, RN, West Virginia Medical Institute

All parties participated by speakerphone and/or videoconference.

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in its determination of the Claimant's homemaker hours under the Aged and Disabled Waiver Program.

V. APPLICABLE POLICY:

Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §§501.3.2.1 - 501.3.2.2
- D-2 Pre-Admission Screening for Aged/Disabled Waiver Services, dated October 20, 2009
- D-3 Additional medical information
- D-4 Notice of Decision dated November 13, 2009

VII. FINDINGS OF FACT:

- 1) Claimant is an 82-year old female recipient of Aged and Disabled Waiver (ADW) Services for whom a reevaluation of medical eligibility was completed on October 20, 2009 (Exhibit D-2).
- 2) The Department issued a Notice of Decision (Exhibit D-4) to the Claimant on or about November 13, 2009. The notice states, in pertinent part:

You have been determined medically eligible to continue to receive in-home services under the Aged and Disabled Waiver Program. The number of homemaker service hours approved is based on your medical needs, and cannot exceed 124 hours per month.

- 3) Policy from Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §§501.3.2.1, 501.3.2.2, states, in pertinent part:

501.3.2.1 LEVELS OF CARE CRITERIA

There are four levels of care for homemaker services. Points will be determined as follows, based on the following sections of the PAS:

Section	Description of Points
#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 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

Total number of points possible is 44.

All of the above levels of care criteria information also applies to Personal Options.

503.2.1 LEVELS OF CARE SERVICE LIMITS

Level	Points Required	Hours Per Day	Hours Per Month
A	5-9	2	62
B	10-17	3	93
C	18-25	4	124
D	26-44	5	155

- 4) On the October 20, 2009, Pre-Admission Screening, or PAS (Exhibit D-2), Paula Clark – the West Virginia Medical Institute (WVMI) RN – assessed 25 points for the Claimant. Three points were awarded for medical conditions and symptoms, one for vacating, 19 for functional abilities in the home, one for medication administration, and one for Alzheimer’s disease.
- 5) -----, the Claimant’s daughter, testified that the Claimant should have been awarded a point for arthritis. She testified that the Department had awarded the Claimant a point for arthritis in a prior assessment, and opined that the condition does not improve over time. Significant arthritis is a medical condition or symptom on the PAS which, if assessed, awards a point toward level of care determination.
- 6) [REDACTED] additionally testified that the Department should have awarded a point for pain, because it is affiliated with arthritis. Pain is also a medical condition or symptom which, if assessed, awards a level of care point.
- 7) Ms. Clark testified that she attempted to verify diagnoses through contact with the Claimant’s physician. She sent a fax to the Claimant’s physician, and it was returned with a handwritten, unsigned, undated note affirming the diagnoses. She indicated she could not accept this as documentation from the physician without the signature and date. She testified that she additionally received documentation that was too old to consider. She testified that a November 10, 2009, letter included with the additional medical documentation (Exhibit D-3) made no mention of any areas that would award points for ADW level of care determination.
- 8) Kay Ikerd, representative for the Department’s Bureau of Senior Services, testified, reiterating that the documentation received could not be used either due to its age, or due to the fact the physician’s letter was not signed.

VIII. CONCLUSION OF LAW:

- 1) Policy dictates that an individual’s level of care for the Aged and Disabled Waiver Program is determined by the number of points assessed on the PAS assessment tool. The Claimant received 25 points on her October 20, 2009, PAS, and was awarded a Level of Care ‘C,’ with a corresponding 124 monthly service hours. No additional points were revealed through evidence or testimony. The medical conditions or symptoms of pain and significant arthritis require a diagnosis from the Claimant’s physician. The Department made a thorough attempt to verify these diagnoses, but was unable to obtain current documentation confirmed by the Claimant’s physician; an undated, unsigned note could have been written by anyone. The Department was correct in its determination of the level of care and corresponding homemaker hours for the Claimant.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's determination of homemaker hours under the Aged and Disabled 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 April, 2010.

**Todd Thornton
State Hearing Officer**