



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

April 14, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 7, 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 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 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" Level of Care to a Level "B" Level of Care. As a result, you are eligible to receive 3 hours per day and 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 Title XIX, (HCB) 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-643

**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 14, 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 April 7, 2010 on a timely appeal, filed January 14, 2010.

It should be noted here that the Claimant's benefits under the Aged and Disabled program continue at the previous level of determination pending a decision from the State Hearing Officer.

It shall be noted this hearing was previously scheduled for March 9, 2010 and a continuance was granted to the Defendant for her failure to appear on the original scheduled date.

II. PROGRAM PURPOSE:

The Program entitled Aged and Disabled Waiver 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-Direct Case Management, Medical Adult Day Care, Transportation, and RN Assessment and Review.

III. PARTICIPANTS:

-----, Claimant

-----, Claimant's daughter

-----, Claimant's daughter

-----, Case Manager, [REDACTED]
Melissa Bell, West Virginia Medical Institute
Kay Ikerd, RN, Bureau of Senior Services

Presiding at the Hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

It shall be noted that all participants participated telephonically.

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" Level of Care to a Level "B" Level of Care.

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 Wavier Policy Manual Chapter 501.3.2.1 and Chapter 501.3.2.2
- D-2 Pre-Admission Screening Assessment dated December 10, 2009
- D-3 Notice of Potential Denial dated December 16, 2009
- D-4 Notice of Decision dated January 11, 2010
- D-5 Additional information submitted by [REDACTED] M.D.
- D-6 Letter dated from Claimant's daughters to West Virginia Medical Institute dated December 27, 2009

VII. FINDINGS OF FACT:

- 1) On December 10, 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 January 11, 2010, the Department issued, Exhibit D-4, Notice of Decision, which informed the Claimant that she 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) Melissa Bell, 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 a total of sixteen (16) points during the evaluation. The Claimant was awarded the following points:

Angina Rest – 1 point
Angina Exertion – 1 point
Dyspena – 1 point
Significant Arthritis – 1 point
Pain – 1 point
Mental Disorders – 1 point
Other – Senile Dementia – 1 point
Vacating during an Emergency – 1 point
Bathing – 1 point
Dressing – 1 point
Grooming – 1 point
Transferring – 2 points
Walking – 1 point
Medication Administration – 1 point
Dementia and Depression – 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) On December 18, 2009, the assessing nurse received additional information from the Claimant’s physician, [REDACTED] M.D which documents in pertinent part:

----- is under my medical supervision and needs assistant distributing and administrating her medications.

----- is unable to transfer in another position without assistance.

The assessing nurse evaluated the information and awarded additional points in the areas of transferring. (Exhibit D-2)

- 6) The Claimants representatives contend that additional points should be awarded in the areas of bladder incontinence, orientation, and eating.

The following address the contested areas:

Bladder Incontinence- -----, the Claimant’s daughter testified that her mother suffers from consistent bladder incontinence and that her mother experiences leakage from her bladder “all the time”. The Claimant’s daughters submitted a letter to WVMI on December 27, 2009. The purpose of this letter was to correct inaccuracies from the PAS assessment. Exhibit D-6, Letter from the Claimant’s daughters indicates “the information about continence is inaccurate”. Additional testimony from -----indicated that the Claimant wears pads to aide in her bladder leakage and that her mother and the homemaker aide consistently launder the Claimant’s urine soaked undergarments. Melissa Bell, WVMI assessing nurse testified that she spoke with the Claimant and the homemaker aide during the assessment about the Claimant’s bladder incontinence. Ms. Bell documented in the PAS assessment (Exhibit D-2) “member reports she

used to have accidents with bladder, but went to Dr. [REDACTED] and has not had accident in a year". Ms. Bell indicated that there was no dispute from the Claimant or the homemaker aide to her findings at the assessment. Ms. Bell indicated that she received the letter from the Claimant's daughters and reviewed it for additional information concerning the Claimant's incontinence. On January 6, 2010 Ms. Bell indicated in the PAS assessment (Exhibit D-2) "member incontinence was recorded as reported by member and homemaker". The Claimant's representatives contend that the homemaker had been employed with their mother for a "couple weeks" before the assessment and she may not have aware of the severity of their mother's condition. Ms. Bell stated that if the Claimant suffers from daily incontinence, the homemaker would have been aware of the situation and should have disputed the findings on the day of the assessment.

Points are awarded in the area of incontinence when the individual experiences accidents of the bladder of three to five times a week. Testimony revealed that the Claimant suffers from daily bladder incontinence and the homemaker aide would have been aware of such difficulties at the assessment. Upon conclusion of the assessment, Ms. Bell reviewed her findings with the Claimant and the homemaker aide and no discrepancies were noted. The Claimant indicated that she had not suffered from bladder incontinence in over a year therefore the assessing nurse was correct in her assessment of a Level I, and additional points **cannot** be awarded in the contested area of incontinence.

Orientation-----testified that her mother's orientation varies from day to day and her testimony indicated that the Claimant was having a good day on the day of the assessment. ----purported that her mother's sense of time has deteriorated and it is reflected in the PAS where her mother reported inaccurate answers to some of the assessing nurse's questions. ----explained that her mother loses track of days and time and forgets to order groceries on her specific day or becomes disoriented after an afternoon nap and believes it is morning. ----testified that her mother suffers from senile dementia and the level of that dementia is severe and it was not observed by the assessing nurse on the day of the assessment. ----, the Claimant's daughter testified that her mother has been diagnosed with bipolar disorder and suffers from depression. ----stated that after the assessment her mother was not able to function or provide her own care. Ms. Bell documented in the PAS assessment (Exhibit D-2) that the Claimant was oriented to person, place, and time and situation. Ms. Bell reported that the Claimant was able to state her full name, address, phone number, the county in which she resides, and the current month. Ms. Bell also noted that the Claimant was unsure of the exact day of the week.

The assessing nurse documented that the Claimant suffers from senile dementia. In order for additional points to be awarded in the contested area of orientation, an individual must be totally disoriented to person, place, and time. Although the Claimant related some difficulties remembering the exact day of the week she was able to state her full name, address, and current month. The Claimant did not demonstrate disorientation to person, place, and time therefore the assessing nurse was correct in assessing the Claimant at a Level 1 and additional points **cannot** be awarded in the area of orientation.

Eating-----, Case Manager, [REDACTED] testified that the Claimant has limited arm mobility and that the Claimant requires assistance from the homemaker aide or her daughters to cut up her own food. Ms. Bell testified that the Claimant did report limited movement in her arms and also stated that she able to cut up her own foods.

Ms. Bell testified that she administered a hand grip evaluation during the assessment and that the Claimant hand grips appeared adequate. Ms. Bell purported that she reviewed all information concerning the assessment with the Claimant and the homemaker aide and there was no objections before the conclusion of the assessment.

The Claimant was assessed as a Level I, Self/Prompting, during the PAS assessment. The Claimant demonstrated limited arm mobility but did not indicate any difficulties in cutting up foods during the assessment. Additional information from the Claimant's daughters and physician did not relate any troubles that the Claimant was experiencing in cutting up her own foods therefore the assessing nurse correctly assessed the Claimant at a Level I. Additional points **cannot** be awarded in the area of eating.

- 7) 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 December 10, 2009, the Claimant was assessed a total of sixteen (16) 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, no additional points may be awarded in the contested areas. Total points awarded to the Claimant stand at sixteen (16).
- 4) In accordance with existing policy, an individual with sixteen (16) 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 Department's proposal to reduce the Claimant's homemaker services hours from a Level "C" Level of Care to a Level "B" Level of Care under the Aged and 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 April 2010.

Eric L. Phillips
State Hearing Officer