



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 5, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 26, 2010. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce level of care hours from a Level "D" Level of Care to a Level "C" 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 "D" to a Level "C" Level of Care. As a result, you are eligible to receive 4 hours per day and 124 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, BoSS
WVMI



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

-----,

Claimant,

v.

Action Number: 10-BOR-654

**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 5, 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 26, 2010 on a timely appeal, filed January 6, 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 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 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

-----, Homemaker RN, [REDACTED]

-----, Office Assistant/Part-time Homemaker Aide, [REDACTED]*

-----, Homemaker Aide and Claimant's Granddaughter

-----, Regional Manager, [REDACTED]*

-----, Personal Care Provider, Daughter*

-----, Licensed Social Worker (LSW), Case Manger, [REDACTED]**

Kay Ikerd, RN, Boss, Department Representative**
B.J. Sides, RN, WVMII**

*Participants observed hearing and offered no pertinent testimony
**Participated telephonically

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 “D” Level of Care to a Level “C” 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 Waiver Policy Manual, Section 501.3.2.1-503.2.2.
- D-2 Pre-Admission Screening Assessment dated December 23, 2009
- D-3 Notice of Decision dated January 6, 2010
- D-4 Request for Hearing dated January 18, 2010
- D-5 Letter from -----, RN, Quality Assurance-Medicaid Program Operations
- D-6 Medical Necessity Form completed dated November 9, 2009
- D-7 Letter from [REDACTED] M.D. dated January 18, 2010

VII. FINDINGS OF FACT:

- 1) On December 23, 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 “D” LOC under the program guidelines.
- 2) On January 6, 2010, the Claimant received a Notice of Decision, Exhibit D-3. This exhibit noted that 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) B.J. Sides, West Virginia Medical Institute (WVMI) nurse completed Exhibit D-2, Pre-Admission Screening assessment, as part of her medical assessment of the Claimant. Ms. Sides testified that the Claimant was awarded a total of twenty-three (23) points during the evaluation. The Claimant was awarded the following points as part of the assessment:

Dyspnea – 1 point
Significant Arthritis – 1 point
Dyshagia – 1 point
Pain – 1 point
Mental disorder – 1 point
Other (Coronary Artery Disease) – 1 point
Vacating during an Emergency – 1 point
Eating – 1 point
Bathing – 2 points
Dressing – 1 point
Grooming – 2 points
Bladder Incontinence – 2 points
Orientation – 1 point
Transferring – 2 points
Walking – 2 points
Vision – 2 points
Medication Administration – 1 point

According to Medicaid policy, the assessed points correspond with a LOC rating of Level “C” (18-25); in turn the Claimant is eligible to receive four (4) hours of Homemaker services per day or One hundred-twenty four hours of services per month.

- 4) ----- and -----, the Claimant’s representatives contend that additional points should have been awarded in the areas of communication, disorientation, diagnosis of angina (rest and exertion), eating, dressing, bowel incontinence, wheeling, hearing, and the prognosis of the Claimant.

The following addresses the contested areas:

Communication-----, the Claimant’s Case Manager through [REDACTED] testified that the Claimant lacks some necessary communication skills. She testified that the Claimant experiences trouble in expressing her thoughts and finishing her sentences. -----, the Claimant’s Homemaker and granddaughter, was present during the assessment and testified that her grandmother was having an “okay” day on the day of the assessment. ----- indicated that she needed to repeat the questions that the assessing nurse was asking her grandmother, as she (grandmother) did not fully understand and comprehend the questions being asked of her. B.J. Sides, WVMI assessing nurse, testified that the Claimant was able to speak with her on the day of the assessment and at times the Claimant’s speech was slurred. Ms. Sides indicated that an assessment of a Level Three can be awarded when the assessed individual answers to assessment questions do not pertain to the question being asked or if a family member must interpret the assessing nurse’s questions to the assessed individual.

Testimony revealed that the Claimant required some of the questions repeated during the assessment but the Claimant was able to communicate answers to the assessing nurse with

slurred speech. The Claimant was able to communicate her answers therefore additional points **cannot** be awarded in the area of communication.

Orientation-----offered testimony pertaining to the Claimant's orientation. She indicated that the Claimant requires prompting and supervision at times. -----purported that the Claimant's levels of disorientation range from day to day. The assessing nurse testified that the Claimant was rated as a Level Two as a result of the conducted assessment. Ms. Sides stated that the Claimant was able to tell her the day of the week but was unable to inform her of the month. The Claimant indicated during the assessment that she was disoriented to everything when she was ill. Testimony from the Department revealed that a Level Three is awarded when an individual is regularly disoriented to person, place and time. Testimony stipulated that a Level Four rating would be a comatose status of the individual. The Department representatives stated that if individuals are disoriented to time and place but know who they are a Level Two is awarded as the individual is not totally disoriented.

Testimony indicated that the Claimant was disoriented to time but did not reveal any disorientation to person and place. Points are awarded when the individual is disoriented to person, place, and time. The Claimant did not exemplify a disorientation to all three requirements therefore the Department was correct in the assessment of orientation and additional points **cannot** be awarded.

Angina (Rest and Exertion)-----testified that the Claimant, on multiple occasions, has indicated that she suffers from angina during rest and exertion. -----believes that the Claimant's diagnosis of Coronary Artery Disease is an indication of angina and that the Claimant suffers from the condition predominantly during exertion but does experience chest pains at rest. Testimony from the assessing nurse indicated that a diagnosis of angina was not related on the Medical Necessity Form (Exhibit D-6) and the Claimant had not been prescribed any anti-anginal medications. Ms. Sides explained that the Claimant was taking medications that help with angina but none that were specifically prescribed for angina. She related that none of the Claimant's medications alerted her to seek a diagnosis from the Claimant's physicians.

Only a physician can relate information concerning the diagnosis of an individual. The Medical Necessity Evaluation Form (Exhibit D-6) indicated that the Claimant suffered from congestive heart failure and coronary artery disease but did not indicate the presence of angina. Testimony indicated that some of the Claimant's prescription medications assist with the angina; none were specifically prescribed for the diagnosis. Without indication from the Claimant's physician or a prescription medication for angina, the assessing nurse was correct in the assessment of the diagnostic portion of the PAS assessment and additional points **cannot** be awarded in the area of diagnosis of angina.

Eating-----stated that the Claimant does require physical assistance in eating and that the Claimant, at times, requires assistance to help get food in her mouth and be fed. Testimony indicated that the Claimant requires assistance to place the utensils in her hands and to be guided to the plate or bowl. Additionally, the Claimant requires assistance in grasping cups as other individuals must hold the cup while the Claimant drinks. ----- purported that she must assist her grandmother in grinding, preparing, and cooking food as well as feeding her grandmother. Ms. Sides testified that the Claimant was assessed as a Level Two, requiring

physical assistance. Testimony from the assessing nurse specified that a Level Three is awarded when the individual requires total care to be fed at all times.

Testimony indicated that the Claimant could sparingly feed herself in regards to the functional ability of eating and required assistance in being spoon fed or assistance in maneuvering eating utensils from plate to mouth. The Claimant was assessed as a Level Two concerning her functional abilities to eat. As the Claimant has some participation in the activity of eating she cannot be considered a total care recipient and an additional point **cannot** be awarded in the area of eating.

Dressing-----addressed that the Claimant's abilities in dressing. -----indicated that the Claimant requires assistance from the Homemaker Aide in placing her arms and legs through her clothing. -----, the Claimant's Homemaker aide testified that the Claimant is able to use her arms but at the time of the assessment was unable to stand up to pull up her pants. ----- stated that her Grandmother must sit in a chair and she must assist her in putting on her pants and undergarments. Ms. Sides testified that a Level Three is awarded in the area of dressing when the individual is unable participate in the activity of dressing such as unable to extend arms to be dressed or stand up, etc. Ms. Sides noted that the Claimant was able to raise her arms and that the Claimant indicated that she could participate in dressing.

Testimony from the Claimant's representatives indicated that the Claimant is able to minimally participate in the life area of dressing. The Claimant is able to use her arms and does not require total assistance to dress; therefore an additional point **cannot** be awarded in the area of dressing.

Bowel Incontinence-----stated that the Claimant suffers from three to four accidents a week. Ms. Sides testified that she was not informed of any bowel incontinence on the day of the assessment. Ms. Sides stated that a Level Three is awarded when an individual experiences three to four accidents in a week.

Testimony revealed that the Claimant and Homemaker did not indicate the loss of bowel control during the assessment. 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. An additional point **cannot** be awarded in the area of bowl incontinence.

Wheeling-Testimony from -----indicated that the Claimant is wheel chair bound and uses this assistance in the home and that the Claimant is unable to wheel herself without physical assistance. The Claimant's representatives testified that the Claimant was sitting on the couch on the day of the assessment and not utilizing her wheelchair. Ms. Sides testified that she was not informed that the Claimant was using a wheel chair on the day of the assessment and testified that wheeling is only awarded when the individual lacks the functional ability in the home.

Exhibit D-7, Letter from [REDACTED] M.D. documents in pertinent part:

----- requires significant care and supervision to continue to live safely at home. The patient is wheel chair bound with minimal ambulation with assistance.

Testimony from the Claimant's representatives indicates that the Claimant is unable to wheel herself without physical assistance in the home and outside of the home. The Claimant was rated as a Level Three in regards to her walking and can therefore be assessed for additional points in the area of wheeling. Documentation relating that the Claimant is wheelchair bound was received by the Department on January 19, 2010. The PAS assessment indicates weakness in the Claimant's handgrips and poor range of motion. Testimony regarding the Claimant's wheeling was credible therefore an additional point **can be** awarded in the area of wheeling.

Hearing-----stated that the Claimant's hearing is impaired and she believed that the Claimant should have been rated as a Level Two in the contested area. Kay Ikerd, RN, Boss and Department Representative established that if the Claimant was awarded a Level Two in hearing no additional points would have been awarded as points relate to the functional abilities in the home.

Testimony from the Department representatives established that points are not awarded when an individual is evaluated as a Level Two for hearing. Aged and Disabled Waiver Manual Chapter 501.3.2.1 Level of Care Criteria indicates points are awarded for functional abilities as follows:

#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.

The Claimant's hearing was evaluated as a Level 1 unimpaired and a Level II rating in the contested area does not constitute a point value therefore additional points **cannot** be awarded in the area of hearing.

Prognosis-----opined that the Claimant's condition is deteriorating and that the Claimant's rehabilitative potential is poor. Ms. Ikerd confirmed that any diagnosis or prognosis must be indicated by the individual's physician and that a nurse cannot make a diagnosis or any prognosis.

Exhibit D-6, Medical Necessity Evaluation Request, was completed by the Claimant's physician on November 10, 2009. The notice specifically lists whether the patient is considered terminal. A deteriorating condition does not constitute points in the determination of an individual's level of care. The Claimant's physician is the only person qualified to evaluate a terminal prognosis and information related to the assessing nurse established that the Claimant was not considered to be in a terminal status. The assessing nurse was correct in the assessment of the Claimant's prognosis therefore an additional point in the area of prognosis **cannot** be awarded.

- 5) Testimony from the Claimant's representatives revealed that the Claimant is now on continuous oxygen. The assessing nurse evaluated the Claimant for continuous oxygen and was informed that the Claimant was on oxygen during a hospital stay for a prior illness but was not on oxygen at the time of the assessment. Information regarding continuous oxygen was not reflective of the Claimant's condition at the time of the assessment and cannot be attributed toward any decision as it relates to the assessment conducted on December 23, 2009.
- 6) 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

- 7) Aged/Disabled Home and Community Based Services Policy Manual 501.3.4 D documents in pertinent part:

In those cases where there is a medical diagnosis question, the QIO RN will attempt to clarify the information with the referring physician. In the event that the RN cannot obtain the information, he/she will document such, noting that supporting documentation from the referring physician was not received.

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) The Claimant was assessed a total of 23 points as part of her PAAS assessment completed by West Virginia Medical Institute on December 23, 2009.
- 3) As a result of evidence and testimony presented during the hearing process, one additional point may be awarded in the area of wheeling. Total points awarded to the Claimant are twenty-four (24)
- 4) In accordance with existing policy, an individual with twenty-four points qualifies as a Level "C" LOC and is therefore eligible to receive five 4) hours of Homemaker services a day or One-Hundred twenty-four hours of Homemaker services a month.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to reduce the Claimant's Level of Care Homemaker service hours from a Level "D" LOC to a Level "C" LOC.

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**