



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 27, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 23, 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 "A" 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 the evaluation of the Pre-Admission Screening Form (PAS) and assigning points to documented medical conditions that require nursing services. Program services are limited 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" to a Level "A" Level of Care. As a result, you are eligible to receive 2 hours per day and 62 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
BoSS
WVMI
[REDACTED]

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

-----,

Claimant,

v.

Action Number: 10-BOR-758

**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 27, 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 22, 2010 on a timely appeal, filed February 1, 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

-----, Homemaker Aide [REDACTED]

-----, Homemaker RN [REDACTED]

Kay Ikerd, RN, Bureau of Senior Services *

Debra Lemasters, RN, West Virginia Medical Institute *

*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 “C” Level of Care to a Level “A” 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 9, 2009
- D-3 Notice of Decision dated December 18, 2009

VII. FINDINGS OF FACT:

- 1) On December 9, 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 December 18, 2009, the Claimant received a Notice of Decision, Exhibit D-3. This exhibit notified 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 62 hours per month.
- 3) Debra Lemasters, West Virginia Medical Institute (WVMI) nurse completed Exhibit D-2, Pre-Admission Screening assessment as part of her medical assessment of the Claimant. Ms. Lemasters testified that the Claimant was awarded a total of nine (9) points during the evaluation. The Claimant was awarded the following points as part of the assessment:

- Diagnosis of Diabetes-1 point
- Other Diagnosis (Congestive Heart Failure)-1 point
- Vacating during an Emergency-1 point
 - Bathing-1 point
 - Dressing -1 point
 - Grooming-1 point
 - Transferring-1 point
 - Walking-2 points

During the assessment the Claimant indicated a diagnosis of dyspnea, arthritis, and pain. The assessing nurse attempted to confirm these diagnoses by facsimile transfer with the Claimant's physician and received no additional information from the Claimant's physician.

According to Medicaid policy, the assessed points correspond with a LOC rating of Level "A" (5-9) points; in turn the Claimant is eligible to receive two (2) hours of Homemaker services per day or sixty-two hours of services per month.

- 4) -----, Homemaker RN [REDACTED] and the Claimant's representative testified that additional points should be awarded in the areas of the diagnosis of angina upon exertion, dyspnea, and arthritis. Additionally, the Claimant and her representatives contest the functional levels of eating and bowel incontinence.

The following addresses the contested areas:

Diagnosis of angina upon exertion, dyspnea, and arthritis- ----- testified that the Claimant suffers from congestive heart failure and coronary artery disease and has a history of medical conditions involving the heart. ----- stated that the Claimant is a dialysis patient with end stage renal disease that requires her to adhere to fluid restrictions in which she can only consume thirty-two ounces of fluids each day. ----- testified that when the Claimant consumes excessive fluids over the restriction amounts she will experience chest pains upon exertion. ----- purported that the Claimant was evaluated by her primary physician on April 19, 2010 and that he documented the diagnosis of angina upon exertion and that the condition existed on or before the date of the PAS assessment. ----- testified that the Claimant's fluid restrictions can contribute to a "build up" of fluid in her lungs creating a shortness of breath and that the Claimant's physician diagnosed this condition on April 19, 2010. ----- stated that the Claimant suffers from arthritis and has an arthritic joint in her right ring finger and her physician documented the diagnosis on April 19, 2010 and referred her to a rheumatologist for further evaluation. Ms. Kay Ikerd, RN, BoSS testified that the basis of the hearing was to determine if the PAS was assessed correctly in December of 2009 and objected to the diagnosis findings in April 2010.

A Diagnosis of angina was not reported to the assessing nurse at the time of the assessment. The assessing nurse attempted to confirm the diagnoses of dyspnea and arthritis via facsimile with the Claimant's physician and did not receive a response to the correspondence. The Medical Necessity Evaluation Form included in the PAS assessment Exhibit D-2, did not indicate any of the contested diagnosis. The Claimant's physician established the diagnoses of the contested areas in April 2010, four months after the PAS in question was completed therefore such diagnoses cannot be considered when determining the accuracy of an assessment completed in December 2009. The assessing nurse was not aware that any of the additional diagnoses existed at the time and correctly assessed the Claimant's medical conditions and symptoms; therefore additional points **cannot** be awarded in the areas of diagnosis of medical conditions and symptoms.

Eating- ----- testified that the Claimant has reported requiring assistance in cutting up her own food. ----- stated that the Claimant is blind in her left eye and suffers from limited vision in her right eye. ----- stated that the Claimant's poor vision accompanied with her arthritis makes it "at times" difficult for the Claimant to cut up her own foods. Ms. Lemasters documented in the PAS assessment that the Claimant stated that she could feed herself and cut up her own food.

Ms. Lemasters testified that she observed the Claimant making pot holders on the day of the assessment and that the Claimant was able to administer her own insulin and read prescriptions bottles.

The Claimant was evaluated at a Level I Self/Prompting at the December 9, 2009 PAS assessment. In order for additional points to be awarded in the contested area, the Claimant would need to require additional assistance or total care in the life area. Information reported to the assessing nurse demonstrated that she did not require any additional assistance in cutting up her foods. During the hearing, testimony from the Claimant's representatives indicated that the Claimant's vision constraints and limited mobility due to an arthritic condition make it difficult for the Claimant to cut up her own foods. On the day of the assessment, the assessing nurse observed the Claimant's participation in creating crafts and the Claimant reported that she was able to administer her own insulin. The Claimant did not report any difficulties in the contested area and did not object to any of the nurse's findings at the conclusion of the assessment. The assessing nurse can only act upon information known at the time of the assessment and correctly evaluated the Claimant at a Level I in regards to the Claimant's functional ability of eating; therefore additional points **cannot** be awarded in the contested area.

Bowel Incontinence----- testified that the Claimant was diagnosed in May 2009 with chronic diarrhea. ----- stated that the condition of the Claimant's chronic diarrhea is unknown but the Claimant estimates three episodes of bowel incontinence each week and utilizes 60 incontinence pads each month. ----- testified that she "wears pads all the time and has been incontinent for the last three years." -----, the Claimant's Homemaker Aide, stated that she removes at least three to four bags of used incontinence supplies from the Claimant's household each week. Ms. Lemasters testified that the Claimant was alert and oriented on the day of the assessment and denied that she suffered from any bowel incontinence. Ms. Lemasters stated that she was not aware of any diagnosis of chronic diarrhea as it was not noted in the physician's referral. Ms. Lemaster documented in the Exhibit D-2, the PAS assessment that the Claimant "denied incontinence supplies or soiling of clothes from incontinence." Ms. Lemasters stated that she reviewed her evaluation with the Claimant at the end of the assessment and there were no objections to the information that she documented in the PAS assessment.

Testimony revealed that the Claimant suffers from incontinence of three to four times per week. During the assessment the assessing nurse documented that the Claimant reported no episodes of bowel incontinence or soiling of clothing from such accidents. The assessing nurse was unaware of any diagnosis of chronic diarrhea as it was not related from the Claimant's physician. Additionally, testimony indicated that the individuals present during the assessment were provided the opportunity to dispute any of the assessing nurse's finding in the PAS assessment and they did not indicate any discrepancies in the PAS assessment. The assessing nurse acted upon information related and known at the time; therefore additional points **cannot** be awarded in the area of bowel incontinence.

- 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

- 6) 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 nine (9) points as part of her PAS assessment completed by the West Virginia Medical Institute on December 9, 2009.
- 3) The matter before the Board of Review is whether or not the assessment completed by the WVMi RN in December 2009 was accurate based on information known at the time. According the Claimant's testimony inadequate information regarding the frequency of her bowel incontinence, eating abilities, and diagnoses were provided at the assessment. The assessing nurse acted upon information that was made available to her in determining the

Claimant's medical eligibility for Aged and Disabled Waiver Program benefits. It is the responsibility of the Claimant and her representatives to provide accurate information at the time of the assessment, and not the responsibility of the Hearing Officer to reassess the Claimant's abilities with new information that was not make available to the assessing nurse. Furthermore, the assessing nurse followed policy correctly by attempting to secure information regarding the Claimant's diagnoses from the Claimant's physician and received no response from the physician to adjust her findings.

- 4) As a result of evidence and testimony presented during the hearing process, no additional points may be awarded. Total points awarded the Claimant stand at nine (9).
- 5) In accordance with existing policy, an individual with nine points qualifies as a Level "A" LOC and is therefore eligible to receive two (2) hours of homemaker services a day or sixty-two (62) 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 services hours from a Level "C" LOC to a Level "A" Level of Care.

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**