



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 7, 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 your dissatisfaction with your Level of Care hours assigned to you from your Pre-Admission Screening assessment completed December 8, 2009.

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 WVM (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 remain at its current level (Level C). As a result, you are eligible to receive 4 hours of homemaker service hours per day and 124 hours per month of homemaker services.

It is the decision of the State Hearing Officer to Uphold the action of the Department to evaluate the Level of Care homemaker hours at a Level "C" Level of Care.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Kay Ikerd, RN, BoSS
WVM

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

-----,

Claimant,

v.

Action Number: 10-BOR-833

**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 7, 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 26, 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 (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

-----, Claimant's Homemaker Aide, [REDACTED]
Kay Ikerd, RN, Bureau of Senior Services (BoSS)
Melissa Bell, RN, West Virginia Medical Institute (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 the Claimant's Level of Care hours at 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 and 503.2.2
- D-2 Pre-Admission Screening assessment dated December 8, 2009
- D-3 Notice of Decision dated January 4, 2010

Claimants' Exhibits:

- C-1 Letter from physician [REDACTED] D.O. dated December 22, 2009

VII. FINDINGS OF FACT:

- 1) On December 8, 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.
- 2) On January 4, 2010, the Department issued, Exhibit D-3, 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 and her corresponding level of care was approved at One-Hundred Twenty Four services hour per month (LOC "C" 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 twenty-five points during the evaluation. The Claimant was awarded the following points:

Angina Rest-1 point
Angina Exertion-1 point
Dyspnea-1 point
Significant Arthritis – 1point

Dysphagia-1 point
 Pain-1 point
 Diabetes-1 point
 Mental Disorders-1 point
 Other (Morbid Obesity, Fibromyalgia, Hyperlipidemia, Hypertension, Sleep Apnea)-1 point
 Decubitis-1 point
 Vacating during an Emergency-1 point
 Eating-1 point
 Bathing-1 point
 Dressing – 2 points
 Grooming-1 point
 Bladder Incontinence-2 points
 Bowel Incontinence-2 points
 Transferring-2 points
 Walking-2 points
 Medication Administration-1 point

According to Medicaid policy, the assessed points correspond with a LOC rating of Level “C” (18-25 points); in turn the Claimant is eligible to receive four (4) hours of homemaker services per day or One-Hundred twenty four (124) hours of services per month.

- 4) -----, Homemaker Aide from [REDACTED] began her services with the Claimant in March 2010, thus she was not aware of the Claimant’s abilities at the time of the assessment of December 8, 2009, and any testimony she provided was not considered in this decision.
- 5) On December 22, 2009, the Claimant’s physician, [REDACTED] D.O. submitted Exhibit C-1 for consideration in the final determination of the PAS assessment. Exhibit C-1 documents, “Pt requires total care with bathing, grooming, and dressing.” The assessing nurse documents in Exhibit D-2, that she reviewed the additional information and updated the assessment.
- 6) The Claimant contends that additional points should be awarded in the areas of bathing and grooming.

The following addresses the contested areas:

Bathing and Grooming-The Claimant testified that she requires total care in the areas of bathing and grooming. She testified that her physician submitted documentation noting the fact that she requires such care. The Claimant testified that she requires total assistance in each area as she suffers from significant pain in her arms associated with her cancer and she is unable to perform functions associated with each life area. Kay Ikerd, RN, Bureau of Senior Services, indicated that the additional information was reviewed and that a physician may not witness an individual’s functional abilities in their home. Ms. Ikerd stated that an assessing nurse must evaluate additional information submitted and weigh it against what was witnessed in the home on the day of the assessment. Melissa Bell purported that in order to evaluate the Claimant at a Level III; the individual must require total care and have no participation in the life area. Ms. Bell testified that the Claimant was able to complete her bath in bed and that the Claimant participated in washing her face while the Homemaker Aide washed the Claimant’s body. In

regards to grooming, Ms. Bell indicated that the Claimant requires physical assistance with shampooing, deodorants, lotions, and toenails but the Claimant can participate in caring for her dentures if products are set up for her. Additionally Ms. Bell noted that the Claimant participated in caring for her own fingernails (Exhibit D-2).

The additional information submitted by the Claimant's physician was vague in stating that the Claimant required total care with bathing, dressing, and grooming. The information did not indicate to what aspect that the Claimant required total care. The assessing nurse evaluated the Claimant on the day of the assessment and determined that the Claimant was able to participate in her grooming and bathing and thus rated the Claimant as a Level II, requiring physical assistance. The Claimant's ability to wash her own face and trim her own fingernails indicates participation from the Claimant in the contested areas; therefore the assessing nurse was correct to rate the Claimant as a Level II. Additional points **cannot** be awarded in the areas of bathing and grooming.

- 7) Testimony from Ms. Ikerd indicated that if the Claimant's abilities have decreased in any area considered in the PAS assessment, the Claimant may request an increase in homemaker service hours through her service agency Homemaker registered nurse.
- 8) 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 8, 2009, the Claimant was assessed total of 25 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 twenty-five.
- 4) In accordance with existing policy, an individual with twenty-five (25) points qualifies as a Level "C" LOC and is therefore eligible to receive 4 hours per day or 124 hours per month of homemaker services.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the Agency's determination of a Level "C" Level of Care for the Claimant 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