



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 29, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 28, 2010. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker service hours under the Medicaid Aged/Disabled (HCB) Title XIX Waiver Services 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.

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" to a level "B" Level of Care. As a result, you are eligible to receive 3 hours per day or 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 Aged/Disabled (HCB) Title XIX 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
[REDACTED]

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

-----,

Claimant,

v.

Action Number: 10-BOR-886

**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 29, 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 28, 2010 on a timely appeal, filed February 19, 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

-----, RN Case Manager, [REDACTED]

Angel Khosa, Bureau of Senior Services (BoSS)

Angie Hill, 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 was correct in its proposal to reduce the Claimant's homemaker services hours provided through the Medicaid Aged and Disabled Waiver Program.

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, § 501.3.2.1-501.3.2.2
- D-2 Pre-Admission Screening assessment dated January 25, 2010
- D-3 Notice of Decision dated February 2, 2010
- D-4 Facsimile transfer from [REDACTED] to Angie Hill, RN, WVMI dated January 25, 2010

VII. FINDINGS OF FACT:

- 1) On January 25, 2010, the Claimant was medically assessed to determine his 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 February 2, 2010, the Claimant received a Notice of Decision, Exhibit D-3. This exhibit noted that the 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 ninety-three (93) hours per month (LOC "B" determination).
- 3) Angie Hill, 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. Hill testified that the Claimant was awarded a total of sixteen (16) points during the evaluation. The Claimant was awarded points in the following areas of the PAS assessment:

- Dyspnea-1 point
- Arthritis-1 point
- Pain-1 point
- Diabetes-1 point
- Mental Disorder-1 point
- Other diagnosis-Hypertension-1 point
- Vacating during an emergency-1 point
- Eathing-1 point

Bathing-1 point
Dressing-1 point
Grooming-1 point
Bowel Incontinence- 1 point
Transferring-1 point
Walking-1 point
Skilled Needs (Continuous Oxygen)-1 point
Medication Administration-1 point

Ms. Hill testified that the Claimant related issues concerning angina at rest, angina with exertion, arthritis, dysphagia, and mental disorders during the assessment. Ms. Hill issued a facsimile transfer (Exhibit D-4) to the Claimant's physician to confirm each diagnosis. On January 25, 2010, Ms. Hill received returned correspondence from the physician documenting that the Claimant suffered only from arthritis and a mental disorder. Ms. Hill adjusted her findings in the PAS assessment (Exhibit D-2) and awarded points to reflect the physician's diagnoses of arthritis and the mental disorder.

- 4) The Claimant and his representative contend that additional points should have been awarded in the areas of angina at rest and exertion, bladder incontinence and transferring.

The following addresses the contested areas:

Angina Rest and Exertion-----, RN Case Manager, [REDACTED] testified that although the Claimant does not have a diagnosis of angina, he has been prescribed Cardizem CD for chest pains. Ms. Hill stated that Cardizem CD is used for angina but can also be prescribed for high blood pressure and atrial fibrillation. Ms. Hill indicated that she received a diagnosis of coronary artery disease and she sought confirmation of angina with the Claimant's physician. Ms. Hill noted that the physician denied any diagnosis of angina in the requested correspondence (Exhibit D-4).

Testimony revealed that additional points may be awarded in the Medical Conditions and Symptoms portion of the PAS assessment when there is a corresponding diagnosis of the medical condition from the physician. The assessing nurse attempted to clarify the diagnosis in question with the Claimant's physician and was informed that such diagnosis did not exist. The assessing nurse acted correctly based on information related during the assessment; therefore additional points **cannot** be awarded in the area of angina at rest and exertion.

Bladder Incontinence-----testified that the Claimant's short term memory loss inhibited the Claimant from relating information concerning his bladder incontinence at the assessment. ----stated that the Claimant suffered from bladder incontinence at the time of the PAS assessment but he was unaware of the frequency of the Claimant's incontinence episodes. ----purported that the Claimant experiences constant bladder incontinence in his current condition. Ms. Hill testified that the Claimant indicated bowel incontinence during the assessment but failed to indicate the existence of any bladder incontinence.

Testimony revealed that while the Claimant may have suffered from bladder incontinence at the time of the assessment the frequency of such condition in January 2010 was unknown. Additionally, the Claimant denied any bladder incontinence or leakage during the assessment. Information reported to the assessing nurse did not indicate that a condition of bladder

incontinence existed in January 2010; therefore the assessing nurse correctly assessed the contested area. Additional points **cannot** be awarded in the contested area of bladder incontinence.

Bathing-----indicated that the Claimant's overall condition has deteriorated since the PAS assessment and he has been admitted to the hospital an estimated three times since January 2010. -----stated that the Claimant was admitted to the hospital the week of April 19, 2010 for generalized weakness and the Claimant's present condition requires him to have assistance when transferring into the bathtub due to dizziness. Ms. Hill testified that the Claimant was awarded a point in bathing and that the Claimant indicated during the assessment that he could transfer in and out of the bathtub without assistance.

Testimony revealed that the Claimant's overall condition has deteriorated since being assessed in January 2010. The PAS assessment is based on the condition and the functional abilities of the Claimant in January 2010. Testimony indicated that the Claimant required additional assistance due to his deteriorating condition, however the information reported to the assessing nurse at the assessment indicated no difficulties in the contested area. The assessing nurse can only administer points to conditions known at the time of the assessment; therefore additional points **cannot** be awarded in the contested area of bathing.

- 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) On January 25, 2010, the Claimant was assessed a total of 16 points as part of his PAS assessment completed by West Virginia Medical Institute.
- 3) As a result of evidence and testimony presented during the hearing process, no additional points may be awarded. 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 Agency's proposal to reduce the Claimant's homemaker service hours under the Aged/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**