



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 26, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 21, 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 evaluation of 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 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
BoSS
WVMi



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

-----,

Claimant,

v.

Action Number: 10-BOR-931

**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 26, 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 21, 2010 on a timely appeal, filed February 23, 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 Supervisor, [REDACTED]

-----, Case Manger, [REDACTED]

Angel Khosa, Bureau of Senior Services*

B.J. Sides, 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 “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 Waiver Policy Manual, Section 501.3.2.1-503.2.2
- D-2 Pre-Admission Screening Assessment dated February 1, 2010
- D-3 Medical Necessity Evaluation Request dated December 7, 2010
- D-4 Hearing Request dated February 23, 2010
- D-5 Notice of Decision dated February 4, 2010.

VII. FINDINGS OF FACT:

- 1) On February 1, 2010, 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 February 4, 2010, the Claimant received a Notice of Decision, Exhibit D-5. 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 93 hours per month (LOC “B” 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 sixteen (16) points during the evaluation. The Claimant was awarded the following points as part of the assessment:

Significant Arthritis- 1 point
Other Diagnosis (Hypertension)-1 point

Vacating during an Emergency – 1 point
Eating – 1 point
Bathing-1 point
Dressing- 1 point
Grooming – 1 point
Bladder Incontinence- 1 point
Bowel Incontinence- 2 points
Orientation – 1 point
Transferring- 2 points
Walking- 2 points
Medication Administration- 1 point

Ms. Sides indicated that due to clerical error, points in the areas of eating and orientation were awarded incorrectly based on reported information from the Claimant at the assessment. Ms. Sides testified that the reported information would have contributed to a lesser point value in the PAS however the error resulted in the points being conceded to the Claimant by the Department.

According to Medicaid policy, the assessed points correspond with a LOC rating of Level “B” (10-17); in turn the Claimant is eligible to receive 3 hours of Homemaker services per day or Ninety–three hours of services per month.

- 4) -----, the Claimant’s representative contends that additional points should have been awarded in the areas of the diagnosis of hyperlipidema, pain, and anxiety. Additionally, the Claimant and her representatives contest the areas of grooming, bladder incontinence, and wheeling.

The following address the contested areas:

Diagnosis of Hyperlipidema-----, Homemaker RN Supervisor [REDACTED] contends that an additional point should be awarded in the area of Hyperlipidema. She indicated that the Claimant’s physician has diagnosed the Claimant with Hyperlipidema and this was documented in the Medical Necessity Evaluation Form, Exhibit D-3. Ms. Sides stated that points were awarded in the area of other diagnoses and that she awarded one point for Hypertension. Ms. Sides stated that only one point may be awarded in the PAS assessment for other diagnoses.

Testimony indicated that the Claimant received the maximum number of points in the area of other diagnoses; therefore additional points **cannot** be awarded for the diagnosis of hyperlipidema.

Diagnosis of Pain- ----- purported that the Claimant does suffer from pain in her shoulders, legs and back and indicated that the Claimant was awarded the diagnosis of pain on prior assessments. ----- stated that the Claimant informed her physician that she did not want to take “drug type” medications for her pain and she was prescribed Naproxen and uses ibuprofen for the experienced pain. Ms. Sides rebutted that Exhibit D-3, Medical Necessity Evaluation Form did not indicate a diagnosis of pain from the Claimant’s physician. Ms. Sides testified that the prescriptions medication made available to her on the day of assessment did not include any medications for pain. Ms. Sides indicated that the ibuprofen administered to the Claimant is an over the counter medication and not prescribed by a physician.

In order to assess point in the Medical Conditions and Symptoms portion of the PAS assessment, the assessing nurse must have a diagnosis from the individual's physician or a prescribed medication which identifies a specific diagnosis. The physician did not indicate that the Claimant had the diagnosis of pain on the Medical Necessity Evaluation Form and the assessing nurse was not presented any prescribed medications for pain during the assessment. The assessing nurse can only act upon information presented and was not made aware of any pain diagnosis of the Claimant; therefore the assessing nurse administered points correctly in the area of a pain diagnosis and additional points **cannot** be awarded in the contested area.

Diagnosis of Mental Disorder- ----- stated that the Claimant's physician has diagnosed her with anxiety and that she has been prescribed Ativan and Hydroxyzine for anxiety. Ms. Sides testified that the physician did not indicate a diagnosis of anxiety on the Medical Necessity Evaluation Form, Exhibit D-3. Ms. Sides stated that she was provided with a prescription for Hydroxyzine; however the medication was labeled for use for itching and not anxiety. Ms. Sides testified that if the medication would have been listed for anxiety she would have conferred with the Claimant's physician for clarification on the diagnosis.

In order to assess point in the Medical Conditions and Symptoms portion of the PAS assessment, the assessing nurse must have a diagnosis from the individual's physician or a prescribed medication for the specific diagnosis. The physician did not indicate that the Claimant had the diagnosis of anxiety on the Medical Necessity Evaluation Form and the prescription for Ativan was not related to the assessing nurse on the day of the assessment. Additionally, the Claimant's prescription medication of Hydroxyzine was labeled for use for itching and did not indicate use for anxiety. The assessing nurse was not presented with any indications that the condition of anxiety existed and did not seek confirmation from the Claimant's physician. The assessing nurse acted correctly upon information presented during the assessment and additional points **cannot** be awarded in the contested area of the diagnosis of a mental disorder.

Grooming- ----- opined that the Claimant should have been diagnosed as a Level III in regards to her Grooming. ----- indicated that the Claimant is more open with her about her limitations. ----- stated that the Claimant's unsteadiness from the pain in her shoulders, back, and legs requires additional assistance in the area of grooming. Ms. Sides testified that individuals are evaluated at a Level III when they require total care and are unable to participate in the life area. Ms. Sides stated that during the assessment the Claimant stated that she was able to care for her teeth and did not require total care assistance.

Testimony indicated that the Claimant required additional assistance in the area of grooming due to unsteadiness from pain. The Claimant reported that she was able to participate in the life area of grooming and testimony did not demonstrate that the Claimant required total care in the area of grooming; therefore additional points **cannot** be awarded in the contested area.

Bladder Incontinence- ----- testified that the Claimant wears incontinence pads to assist her with bladder accidents. ----- stated that the Claimant utilized such pads at the time of the assessment and such use of incontinence pads continues to the present. ----- testified that the Claimant has been diagnosed with urinary incontinence since she has assisted the Claimant. --- -- indicated that the Claimant suffers from periods of incontinence of three to four times a day and related that the Claimant did not communicate this information to the assessing nurse on

the day of the assessment as she was unfamiliar with the assessing nurse. Ms. Sides acknowledged that she asked the Claimant during the assessment if she suffered from loss of control of her bladder three to four times a week and the Claimant did not indicate any such frequency of her bladder incontinence.

Testimony revealed that the Claimant suffers from a loss of control of her bladder three to four times a day and that the Claimant was experiencing this frequency at the time of the assessment and the episodes of incontinence continue to present day. Testimony regarding the Claimant's bladder incontinence demonstrated that the Claimant failed to demonstrate the severity of her condition during the assessment due to embarrassment. This testimony appeared credible and that the Claimant's episodes of bladder incontinence met the requirements to establish a deficit in the contested area therefore an additional point **can be** awarded in the area of bladder incontinence.

Wheeling----- stated that the Claimant is unable to push herself in a wheelchair and that the Claimant utilizes a wheelchair when she is experiencing a "very bad day". ----- indicated that when the Claimant uses a wheelchair and she requires assistance in wheeling. Ms. Sides stated that the Claimant indicated to her on the day of the assessment that she was not utilizing her wheelchair in the home and that the assessment is based on the individual's functional abilities in the home.

Testimony indicated that the Claimant does not utilize the assistive device of a wheelchair in her home on a consistent basis. Reported statements to the assessing nurse did not document that the Claimant used a wheel chair in her home therefore additional points **cannot** be awarded in the contested area of wheeling.

- 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 sixteen (16) points as part of her PAS assessment completed by the West Virginia Medical Institute on February 1, 2010.
- 3) As a result of evidence and testimony presented during the hearing process, one additional point may be awarded in the area of bladder incontinence. Total points awarded to the Claimant are seventeen (17).
- 4) In accordance with existing policy, an individual with seventeen points qualifies as a Level "B" LOC and is therefore eligible to receive three (3) hours of homemaker services a day or ninety three 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 "C" LOC to a Level "B" 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**