



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

October 22, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 21, 2009. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker service hours under the 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/Disabled Waiver Program is based on current policy and regulations. One of these regulations specifies that for the Aged/Disabled Waiver (ADW) Program, 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 Services Waiver Policy and Procedures Manual 501)

Information submitted at your hearing reveals that your condition at the time of your Pre Admission Screening qualifies for the degree of care and services offered under the Level D of Care under the ADW program.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to decrease your Level of Care under the Aged/Disabled Waiver Program from Level D to Level C.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
Central West Virginia Aging

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

-----,

Claimant,

v.

Action Number: 09-BOR-1650

**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 October 21, 2009 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 October 21, 2009 on a timely appeal filed August 3, 2009.

It should be noted that the Claimant's benefits have continued pending a hearing decision.

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's homemaker and ex-wife, representing Claimant
-----, Claimant's Registered Nurse (RN), Special Touch
-----, Claimant's Case Manager, Central West Virginia Aging

Kay Ikerd, Bureau of Senior Services, representing Department
Isabelle Bukac, RN, WVMI, Department's witness

It should be noted that the Department participated by conference call, as did -----.

Presiding at the Hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 501

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 501
- D-2 Pre-Admission Screening (PAS) assessment completed on July 1, 2009
- D-3 Fax from Central West Virginia Aging Services (CWVAS) dated October 6, 2009
- D-4 Notice of Decision dated July 24, 2009

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter called ADW, was undergoing an annual reevaluation to verify continued medical eligibility in July 2009.
- 2) The West Virginia Medical Institute (WVMI) nurse, Isabelle Bukac, completed a medical assessment Pre-Admission Screening (PAS) form (D-2) on April 3, 2009 and determined that the Claimant continues to meet the medical eligibility criteria.
- 3) Four (4) points were assessed for Medical Conditions and Symptoms for arthritis, diabetes, cardiovascular accident (CVA), and mental disorder. One (1) point was assessed for ability to vacate a building. Eighteen (18) points were assessed in the area of functional abilities in the home; specifically: one (1) point for eating, two (2) points for bathing, one (1) point for dressing, two (2) points for grooming, two (2) points for bladder incontinence, two (2) points for bowel incontinence, two (2) points for

transferring, two (2) points for walking, two (2) points for wheeling, and two (2) points for communication. One (1) point was assessed for medication administration, and one (1) point was assessed for senile dementia. A total of twenty five (25) points were assessed during the screening and the Claimant was assessed at Level (C) care. The Claimant would need one (1) additional point for a total of twenty six (26) in order to be assessed at Level (D).

- 4) Witnesses for the Claimant raised issues in the following areas:

Dysphagia, which is listed under Medical Conditions and Symptoms on the PAS: The Claimant was not assessed a point in this area. The WVMI nurse recorded on the PAS that the Claimant has no diagnosis for this condition. She declined to list any narrative from the Claimant when this condition was assessed, and could not recall if he made comments in this regard.

The Claimant's Registered Nurse, -----, testified that she was present the day the PAS was completed, and recalls informing the WVMI nurse that the Claimant had an endoscopy procedure completed on April 29, 2009 at which time his physician recommended that he have a feeding tube inserted. She adds that the Claimant refused this procedure and has been required to use "thicket," which is a substance that thickens liquids to lessen the chance of aspiration, since that time. She reports that he has difficulty swallowing and that food aspirates into his lungs. The Claimant's homemaker, Ms. -----, corroborated her testimony. The WVMI nurse did not list the Claimant's RN as being present for the PAS assessment but also could not recall whether she was there or not. The Claimant's homemaker stated that she remembered her being present. In addition, under page six (6) of the PAS in the section marked "eating", the WVMI nurse recorded that the ex-wife mashes up all the Claimant's food as he has problems swallowing and easily gets choked. The WVMI nurse stated that after learning the Claimant has difficulty in this area, she did not contact the physician in order to determine if the Claimant has this condition. The Claimant submitted to the Department a copy of medical information from his physician (D-4) which shows he has dysphagia. The date the condition was recorded is listed as October 5, 2009.

Dyspnea, which is listed under Medial Conditions/Symptoms on the PAS: The Claimant was not assessed a point in this area. The WVMI Nurse recorded on the PAS that the Claimant has no diagnosis or prescription for this condition, and that he denied having shortness of breath. Witnesses for the Claimant stated that he does have shortness of breath, however they do not recall if this was mentioned to the WVMI nurse the day of the assessment.

Orientation, which is listed under Functional Abilities on the PAS: The Claimant was rated as being oriented to all spheres the day of the assessment, and not assessed a point in this area. The Claimant's witnesses stated that although they agree he was oriented the day of the assessment, he is intermittently disoriented due to the senile dementia. Again, they do not recall if this was brought to the WVMI nurse's attention the day of the assessment.

- 5) Aged/Disabled Home and Community Based Services Waiver Policy Manual Section 501.3.1.1 states in pertinent part:

A QIO (Quality Improvement Organization) under contract to BMS (Bureau for Medical Services) determines medical eligibility for the ADW Program.

- 6) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2.1 and 501.3.2.2 (D-1):

There are four levels of care for 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- Decubitis- 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
- #35- 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 Waiver Policy Manual Section 501.3.4 states in pertinent part:

MEDICAL REEVALUATION

Annual reevaluations for medical necessity for each ADW member must be conducted. The process is as follows:

- C. If the QIO RN makes the contact, a letter is sent to the member, CMA (if applicable), and identified representative noting the contact

and date of the home visit, allowing at least two weeks notice. When the home visit is made, the QIO RN, through observation and/or interview process, completes the PAS (Attachment 14). The RN will record observations and findings regarding the member's level of function in the home. RNs do not render medical diagnoses.

D. 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) Policy dictates that an individual's Level of Care for the Aged/Disabled Waiver Program is determined by the number of points the individual is awarded after being assessed by the QIO RN – in this case the West Virginia Medical Institute (WVMI) RN, utilizing the PAS assessment tool. The nurse is to determine functional abilities through observation and/or interviewing.
- 2) Policy also dictates that when 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.
- 3) The Claimant received twenty five (25) points on a PAS completed by WVMI in July 2009 in conjunction with an annual evaluation, which resulted in a reduction in level of care from Level (D) to Level (C). For the previous level of care, the Claimant would need at least one (1) additional point for a total of twenty six (26) points.
- 4) The evidence clearly shows that the Claimant has dysphagia. It was clearly reported during the PAS that he had difficulty in swallowing. In addition, testimony from the Claimant's RN Case Manager supports that she told the WVMI RN during the PAS assessment that the Claimant has difficulty swallowing. She also testified that she told the nurse that the Claimant's physician suggested the need for a feeding tube after an endoscopy in April 2009; however, after the Claimant refused this procedure he has been required to use "thicket" in his liquids to help avoid aspiration of food into the lungs. I find her testimony to be credible, and it was corroborated by testimony from the Claimant's Homemaker.
- 5) The WVMI RN did not document on the PAS the comments made by the Claimant's RN Case Manager, and she failed to follow up by contacting the physician to clarify the information.
- 6) The condition was documented by the physician at the Claimant's request in October 2009. This, along with the relevant testimony provided during the hearing, supports that the Claimant had dysphagia at the time the PAS was completed in July 2009.

- 7) With the additional one (1) point awarded for dysphagia, the Claimant now has a total of twenty six (26) points, which qualifies him for Level (D) care.
- 8) The Department's decision to reduce the Claimant's level of care to Level C is not correct.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** 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 22nd Day of October, 2009

**Cheryl Henson
State Hearing Officer**