



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Joe Manchin III
Governor

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

December 11, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 4, 2009. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker hours from Level D care to Level C.

In arriving at a decision, the State Hearings 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. 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 submitted at your hearing revealed that you no longer meet the medical criteria to remain at a Level D care.

It is the decision of the State Hearings Officer to **Uphold** the proposal of the Department to reduce your homemaker hours to Level C care.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

cc: Chairman, Board of Review
Bureau of Senior Services
West Virginia Medical Institute

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

-----,

Claimant,

v.

Action Number: 09-BOR-1735

**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 December 4, 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 December 4, 2009 on a timely appeal, filed August 18, 2009.

It should be noted here that the claimant's benefits under the Aged/Disabled Waiver program have continued pending a decision.

II. PROGRAM PURPOSE:

The Program entitled Aged/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

-----, Witness for Claimant

-----, Witness for Claimant

Kay Ikerd, RN, Bureau of Senior Services (testified by phone)

Karen Keaton, RN, West Virginia Medical Institute (testified by phone)

Presiding at the Hearing was Kristi Logan , 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's proposal to reduce Claimant's homemaker hours is correct.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Waiver Policy Manual § 501.3.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community Based Waiver Policy Manual § 501.3.2
- D-2 Pre-Admission Screening Form dated August 10, 2009
- D-3 Correspondence from [REDACTED] M.D. dated August 17, 2009
- D-4 Notice of Decision dated August 19, 2009

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Claimant was reevaluated for the ADW program on August 10, 2009. A Pre-Admission Screening Form (PAS) was completed by Karen Keaton, RN of the West Virginia Medical Institute (WVMI) that date (D-2).

Additional medical documentation was provided to WVMI by [REDACTED] M.D. on August 17, 2009 (D-3). Claimant received a total of 25 points on the PAS and his homemaker hours were reduced to 124 hours a month, or Level C care (D-2).

- 2) Claimant's mother, ----, contested Claimant not receiving a point for arthritis. Claimant has spinal stenosis and was told by his physician the condition is the same as arthritis. Claimant had a bone removed from his neck in 2002 which caused his paralysis. He is in constant pain, the origin of which has not been determined. ---- stated there has been no change in Claimant's condition in seven (7) years and cannot understand the reason for the decrease in homemaker hours.

- 3) Karen Keaton, RN with WVMI, testified to the PAS she completed for Claimant. Claimant was not given a diagnosis for arthritis by his physician nor had he been prescribed any medication for arthritis. Without a diagnosis of arthritis, Ms. Keaton stated she could not award a point in that area.

Ms. Keaton stated spinal stenosis is a narrowing of the spinal column and arthritis is the inflammation of joints. She stated she could not give a point for arthritis based on a diagnosis of spinal stenosis.

- 4) Aged/Disabled Home and Community Based Waiver Policy Manual § 501.3.2.1 and 501.3.2.2 states:

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- 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
- #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) Policy dictates that an individual's Level of Care for the Aged/Disabled Waiver Program is determined by the number of points obtained on the PAS assessment tool. The Claimant was awarded 25 points as the result of a PAS completed by WVMi in August 2009.
- 2) Documentation of Claimant's arthritis was not provided to the assessing nurse at the time of the evaluation. Without a diagnosis, the assessing nurse could not award a point in that area. The assessing nurse correctly evaluated Claimant for Level C care.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to reduce Claimant's homemaker hours to Level C care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 11th day of December 2009.

**Kristi Logan
State Hearing Officer**