



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

November 17, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 3, 2009. Your hearing request was based on the Department of Health and Human Resources' reduction of your homemaker service hours in the Aged/Disabled Waiver Program due to a level of care determination.

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. Some of these regulations state that for the Aged/Disabled Waiver Program individuals are evaluated by utilizing the Pre-Admission Screening (PAS) tool to assess their functioning abilities in the home. Points are assigned by the nurse based on the information derived from the PAS assessment interview, and the level of care is divided into four categories of assistance. The individual's level of care is determined based on the points assessed during the completion of the PAS. (Aged and Disabled Waiver Manual Section 501)

The information provided during your hearing shows that you continue to meet the medical requirements for Level of Care (C) in the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to reduce your level of care under the Aged/Disabled Waiver Program.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
PPL

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

-----,

Claimant,

v.

Action Number: 09-BOR-1747

**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 November 3, 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 November 3, 2009 on a timely appeal filed August 18, 2009.

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 Representative

-----, Claimant's witness

-----, Claimant's witness

Kay Ikerd, BOSS

Teresa McCallister, RN, WVMI, Department witness

It should be noted that the Department participated by conference call. It should also be noted that the Claimant chose to have her sister-in-law ----- represent her for the purposes of this hearing. The Claimant was hospitalized and unable to personally attend.

Presiding at the hearing was Cheryl Henson, State Hearing Officer and 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 Level of Care benefits under the Aged/Disabled Home and Community-Based Waiver 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, two (2) pages
- D-2 Pre-Admission Screening (PAS) assessment completed August 7, 2009, eight (8) pages
- D-3 Notice of Decision dated August 11, 2009, one (1) page
- D-4 Notice of Appointment dated July 15, 2009
- D-5 Notice of Appointment dated July 18, 2009
- D-6 Email note from BoSS about documentation dated November 5, 2009

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an annual re-evaluation for the Title XIX Aged and Disabled Waiver Program during the month of August 2009.
- 2) The West Virginia Medical Institute (WVMI) nurse, Teresa McCallister, completed a medical assessment (D-2) on August 7, 2009 in the Claimant's home and determined that she continues to meet the medical requirements for the program; however, she was assessed at Level of Care © rather than (D). The Claimant received twenty three (23) points during the PAS assessment, which places her in Level © care. For Level of Care (D) the Claimant would need at least twenty six (26) points.
- 3) The Claimant's husband, ----, raised issue with the date the assessment was conducted, and claims that he received a letter (D-4) dated July 15, 2009 stating the assessment would be completed on August 10, 2009. He states he did not receive the second letter (D-5) dated July 18, 2009 changing the date of assessment to August 7, 2009. He was not at home when the WVMI nurse came on August 7, 2009 and claims that had he known he would have been at home for the assessment. The Department claims that

WVMI routinely contacts the individual personally when rescheduling appointments, but could not produce the contact information to support that this contact occurred. The WVMI nurse stated she had no knowledge of why the assessment appointment was changed from August 10, 2009 to August 7, 2009 as another individual is in charge of scheduling. As a result of the Claimant's husband's confusion, he was not present while the assessment took place. He did, however, arrive when the nurse was leaving and provided information concerning the Claimant's daily urinary incontinence and that she does not wheel herself in the home at all. In addition, the Claimant's homemaker, ---, stated that she agreed with the Claimant's husband's comments, and clarified that she did not speak up in the home because it upsets the Claimant. The homemaker had followed the nurse outside in order to report more accurate information for consideration. The WVMI nurse consequently updated the rating for urinary incontinence to "incontinent", and wheeling was rated as "total assistance". The WVMI nurse did not go over the entire PAS with the Claimant's husband.

- 4) The record was left open until November 5, 2009 in order for the Department to provide evidence of the telephone contact with the Claimant. Subsequent to the hearing and within the timeframe allowed, the Department provided by email evidence which indicates the Department attempted to retrieve verification of the telephone contact between the Department and the Claimant to reschedule the assessment. The note reads as follows in pertinent part:

Thank you for the extra time you gave me to submit a copy of documentation of the scheduling of an 8/7/09 appointment to conduct a PAS assessment for this Claimant. I did check with WVMI and they do not have a copy of the scheduling contact for the 8/7/09 date. The assessing RN states that she did not keep the contact sheet, nor submit it to WVMI for the permanent record. Therefore, I am unable to obtain said documentation.

Thank you,
Kay Ikerd, RN, Hearing Coordinator
Bureau of Senior Services

- 5) The Claimant contends that additional points should be awarded in the areas of contractures, dysphagia, bathing, medication administration, dressing and bowel incontinence. Each area is addressed below:

Contractures - which is evaluated under "Medical Conditions/Symptoms" on the PAS. The Claimant was not assessed a point in this area. The WVMI Nurse recorded the following on the PAS:

No md dx; mem demonstrates stiffness/flexion of digits rt. Hand.

The nurse testified that the Claimant was unable to move her fingers, but because she did not have a medical diagnosis no point was given. She added that she sent the physician a fax requesting clarification as to whether the Claimant was diagnosed with this condition but did not receive a response. She stated she normally documents this act on the PAS, but did not do so in this instance. The Claimant's Representative and sister-in law, ----, provided that the Claimant cannot move her right hand, shoulder and foot, but could produce no physician evidence of this diagnosis.

Dysphagia - which is evaluated under “Medical Conditions/Symptoms” on the PAS. The Claimant was not assessed a point in this area. The WVMi nurse recorded the following on the PAS:

No md dx; mem reports she has episodes of choking at times; she “always has someone with me when I eat”, reports that she eats soft and small pieces of food to avoid choking.

The nurse testified that she did not assess a point because the Claimant did not have a diagnosis. She adds that she contacted the Claimant’s physician by fax and requested clarification of this condition but received no response. Again, she did not document this on the PAS; however the Department stated they can provide written evidence of her request within twenty four (24) hours. The record was left open until November 5, 2009 for the Department to produce this evidence. The Department failed to provide additional evidence of this regard for consideration. The Claimant’s sister-in-law reports that she always gets choked on her food and they have to watch her closely.

Bathing – which is evaluation under “Functional Levels” on the PAS. The Claimant was rated as needing “physical assistance” in this area and awarded one (1) point. The Claimant would need to rate as needing “total care” in order to receive another point in this area. The WVMi nurse recorded the following on the PAS:

Mem and HM reports she receives a shower with assistance of both HM and husband, they assist her to stand and pivot, and sit on shower chair; Mem reports she washes her own face, rt. Arm, chest, and upper legs; HM reports mem loses her balance when she reaches away from her body. Demonstrates is unable to reach lower legs and feet due to limited ROM back and shoulders, and obese abdomen.

The Claimant’s husband and Homemaker both testified that the Claimant cannot properly soap herself and cannot rinse her body. They added she cannot use pressure when attempting to help with her bath and is generally just going through the motion to some extent. She cannot apply any pressure in these attempts. She will try to hold her breast up for washing but the Homemaker has to also hold it up. The Department Representative stated that if she is assisting at all it would be considered “physical assistance”.

Dressing – which is evaluated under “Functional Levels” on the PAS. The Claimant was rated as needing “physical assistance” in this area and awarded one (1) point. The Claimant would need to rate as needing “total care” in order to receive another point in this area. The WVMi nurse recorded the following on the PAS:

Mem (member) reports that she is able to place her arms in the sleeves of her garment, and then HM pulls it over her head; usually dresses in nightgown; both report that mem does not routinely wear slacks or panties. Mem reports that HM must start pants on her feet, and then mem holds on to the walker while HM pulls up her pants when she goes to Dr. Mem is unable to reach her feet as documented above, so socks must be put on by someone else, and mem says she slip on lt. shoes, needs help with rt.

The Claimant's Homemaker stated that she needs help with both her shoes and cannot raise her right hand to put arms in right sleeves of a garment. She states she must hold the garment to put in her left hand and pull through. She states she completely puts on the Claimant's shoes and socks with no help from the Claimant.

Medication Administration – which is evaluated under question number twenty eight (28) on the PAS. The Claimant was rated as being able to take her medications with “supervision/assistance”. She was assessed one (1) point in this area. One (1) point is all that is possible in this area; therefore, since the Claimant has already received a point, this area will not be addressed further.

Bowel Incontinence – which is rated under “Functional Levels” on the PAS. The Claimant was rated as “Occasionally Incontinent” meaning less than three times weekly, and was assessed one point in this area. The Claimant would need to rate as being “totally incontinent” in order to be assessed an additional point in this area. The WVMi nurse recorded the following on the PAS:

Mem reports that she has occasional episodes of loss of control of BM (bowel movements) approximately every 1-2 weeks.

The Claimant's husband stated that she has bowel accidents two (2) or three (3) times per week. He added “at least once a week”.

6) Aged/Disabled Home and Community-Based Services Manual Section 501.3 (D-1) – MEMBER ELIGIBILITY AND ENROLLMENT PROCESS:

Applicants for the ADW Program must meet the following criteria to be eligible for the program:

C. Be approved as medically eligible for NF Level of Care.

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

Purpose: The purpose of the medical eligibility review is to ensure the following:

A. New applicants and existing clients are medically eligible based on current and accurate evaluations.

B. Each applicant/client determined to be medically eligible for ADW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term services needs.

C. The medical eligibility determination process is fair, equitable and consistently applied throughout the state.

8) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2.1

(D-1) LEVELS OF CARE CRITERIA states in pertinent part:

There are four levels of care for homemaker services. Points will be determined as follows, 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 given for j.

Wheeling

#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

Total number of points possible is 44

- 9) Aged/Disabled Home and Community Based Services Waiver Policy Manual 501.3.2.2 LEVELS OF CARE SERVICE LIMITS states:

Level	Points Required Month	Hours Per Day	Hours Per Month
A	5-9	2	62
B	10-17	3	93
C	18-25	4	124
D	26-44	5	155

The total number of hours may be used flexibly within the month, but must be justified and documented on the POC. Example: If the POC shows 4 hours/day, Monday-Thursday and 5 hours on Friday, the additional hour on Friday must be justified on the POC.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that there are four levels of care for homemaker services. Points are determined based on the individual's medical condition and functional abilities at the time the PAS is completed. Points are assigned accordingly.
- 2) The Claimant was assessed at Level of Care © during her August 7, 2009 assessment, having received twenty three (23) points. To be assessed at Level of Care (D) the Claimant must be assigned at least twenty six (26) points during the assessment. The Claimant's husband was not

at home when the assessment was completed due to the appointment having been rescheduled by WVMi. He was not aware of this change.

- 3) The testimony and evidence provided during this hearing support that the Claimant has both contractures and dysphagia. The Claimant reported difficulty in swallowing and the nurse observed the stiff digits in her hand. Although the nurse indicated she contacted the physician in order to clarify the diagnosis, she did not record this on the PAS as she stated she normally does, nor did the Department supply any evidence after the hearing to support this occurred. Therefore, one (1) point each is being awarded for dysphagia and contractures, for a total of two (2) additional points.
- 4) With the additional added two (2) points, the Claimant now has a totally of twenty five (25) points associated with her August 7, 2009 PAS assessment; however, this does not change the status of her Level of Care from Level ©. She would need twenty six (26) points in order to be assessed Level (D).
- 5) The Claimant's rating for bathing, dressing and bowel incontinence is unchanged. The evidence does not support additional points in those areas. The Claimant has already received a point for Medication Administration and therefore no more points are possible in this category.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to reduce the Claimant's Level of Care from Level (D) to Level ©.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 17th Day of November, 2009

**Cheryl Henson
State Hearing Officer**