



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

July 1, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 29, 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 Service 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



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

-----,

Claimant,

v.

Action Number: 10-BOR-1060

**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 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 June 29, 2010 on a timely appeal, filed March 15, 2010. It shall be noted that the hearing was originally scheduled for May 13, 2010 and rescheduled based on the Claimant's request.

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

-----, Social Worker, [REDACTED]

-----, Social Worker, Bureau of Senior Services (BoSS)

Paula Clark, 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 February 8, 2010
- D-3 Facsimile transmission Paula Clark, RN, WVMI to Claimant's physician
- D-4 Medical Necessity Evaluation Request dated January 12, 2010

VII. FINDINGS OF FACT:

- 1) On February 8, 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 revaluation, the Claimant was assessed at a level "C" LOC under the program guidelines.
- 2) On February 13, 2010, the Claimant received a Notice of Decision. This documentation noted that the Claimant had been determined medically eligible to continue to receive in-home services under the program guidelines but his corresponding level of care would be reduced to ninety-three (93) hours per month (LOC "B" determination)
- 3) Paula Clark, the 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. Clark testified that the Claimant was awarded a total of seventeen (17) 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 Disorders – 1 point
Other diagnosis- 1 point

Vacating during an emergency – 1 point
Eating – 1 point
Bathing-1 point
Dressing- 1 point
Grooming – 1 point
Bladder Incontinence – 1 point
Transferring – 1 point
Walking – 1 point
Professional and Technical Care Needs (Continuous Oxygen) - 1 point
Medication Administration – 1 point
Dementia Diagnosis – 1 point

Ms. Clark testified that the Claimant related issues concerning angina, arthritis, and pain. Ms. Clark issued a facsimile transmission (Exhibit D-3) to the Claimant's physician to confirm each diagnosis. On February 8, 2010, Ms. Clark received returned correspondence from the physician documenting that the Claimant suffered only from arthritis and pain associated with arthritis. Ms. Clark adjusted her findings in the PAS assessment (Exhibit D-2) and awarded points to reflect the Claimant's confirmed diagnoses.

- 4) The Claimant and his representative contend that additional points should have been awarded in the areas of bladder incontinence, bowel incontinence, and orientation.

The following addresses the contested areas:

Bladder incontinence-----, Social Worker, [REDACTED] testified that the Claimant experiences total bladder incontinence and uses pull-ups daily to assist with such difficulties. Ms. Clark testified that she documented in the PAS assessment that the Claimant reported accidents involving his bladder of about two times a month denied the use of any pad or pull-ups. Ms. Clark stated that total incontinence is awarded when the assessed individual experiences occurrences of bladder incontinence of three or more times a week. Ms. Clark purported that the Claimant's Homemaker Aide, was present with the Claimant during the assessment and did not dispute any information that the Claimant relayed during the assessment. -----indicated that the Claimant's Homemaker Aide did not correct any information relayed during the assessment as she was unfamiliar with the Claimant's abilities as she just started assisting the Claimant and was not fully aware of his capabilities.

While the Claimant and his representative contend frequent episodes of bladder incontinence, neither the Claimant or his Homemaker Aide offered any statements during the assessment to support the existence of total incontinence. The Claimant indicated accidents with his bladder about two times a month and denied the use of any pull ups. Based on the evidence, the assessing nurse correctly assessed the Claimant as occasional incontinent and additional points **cannot** be awarded in the contested area.

Bowel Incontinence-The Claimant and his representative contend that the Claimant suffers from bowel incontinence. The Claimant stated that his condition fails to improve and he is embarrassed of his inability to control his bowels. The Claimant indicated that he does not keep track of the occurrences of bowel incontinence due to this embarrassment. Ms. Clark testified that the Claimant denied any episodes of bowel incontinence in the last year. Ms.

Clark stated that the Homemaker Aide offered no statements during the assessment to indicate the existence of bowel incontinence.

Testimony revealed that the Claimant and the Homemaker Aide failed to indicate bowel incontinence and its frequency during the assessment. The assessing nurse acts strictly upon information related during the assessment process and correctly assessed the Claimant based on the information relayed at the time. Additional points **cannot** be awarded in the area of bowel incontinence.

Orientation-----contends that the Claimant is normally disoriented due to his mental condition. -----indicated that the Claimant was not disoriented on the day of the assessment but suffers from disorientation on a regular basis. Ms. Clark testified that the Claimant was oriented to person, place, and time during the assessment. Ms. Clark acknowledged that the Claimant had some confusion as to the day of the month but was oriented and aware of all other questions.

While the Claimant and his representative contend disorientation on a frequent basis, the Claimant did not demonstrate the effects of disorientation during the assessment. The Claimant has been diagnosed with dementia but did not indicate any disorientation to the assessing nurse. Additionally, the Claimant did not display any effects of disorientation while being assessed in such area and answered all questions consistently. Based on documented evidence in the PAS assessment, the assessing nurse correctly assessed the Claimant as oriented to person, place, and time; therefore additional points **cannot** be awarded in the contested area.

- 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

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 February 8, 2010, the Claimant was assessed a total of seventeen (17) points as part of his PAS assessment completed by the 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 seventeen (17).
- 4) In accordance with existing policy, an individual with seventeen (17) 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 July 2010.

Eric L. Phillips

State Hearing Officer