



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

February 25, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 23, 2010. 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 **reverse** 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



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

-----,

Claimant,

v.

Action Number: 09-BOR-2329

**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. It was convened on February 23, 2010 on a timely appeal filed December 7, 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

-----, Claimant's witness

-----, Case Manager, [REDACTED] representing Claimant

Cecilia Brown, Bureau of Senior Services (BoSS), representing Department
Angela Bromiley, RN, WVMI, Department's witness

It should be noted that all parties participated by conference call.

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 Medical Necessity Evaluation Request form dated July 16, 2009
- D-3 Pre-Admission Screening form (PAS) dated September 22, 2009
- D-4 Notice of Decision dated December 1, 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 September 2009.
- 2) A West Virginia Medical Institute (WVMI) registered nurse, Angela Bromiley, completed the Claimant's medical assessment on September 22, 2009 and determined that she continues to meet the medical requirements for the program; however, she was assessed at Level of Care (B) rather than Level (C). The Claimant received sixteen (16) points during the PAS assessment, which places her in Level (B) care.
- 3) The WVMI nurse testified that she incorrectly identified a point for the Claimant in the area of alzheimer's, dementia, or related conditions. She testified that the Claimant was assessed as having depression which does not qualify as a related condition. The Department deducted one (1) point from the total points assessed, leaving the Claimant with fifteen (15) assessed points which continues to qualify her for Level (B) care. For Level of Care (C) the Claimant would need at least eighteen (18) points.
- 4) The Claimant contends that additional points should be awarded in the areas of angina at rest, angina on exertion, arthritis, pain, transferring and walking. Each area is addressed below:

Angina at rest / Angina on exertion - which are evaluated under “Medical Conditions/Symptoms” on the PAS. The Claimant was not assessed points in these areas. The WVMI nurse recorded the following on the PAS:

No DX [diagnosis] noted on referral form. No RX [prescription] medication noted. Member reports complaints of chest pain with rest and exertion.

The Claimant’s Case Manager, -----, testified that the Claimant has atrial fibrillation and congestive heart failure, which was clearly documented during the Claimant’s PAS assessment. The Claimant testified that she has had angina at rest and on exertion for years and is prescribed nitro glycerin. She also provided that she had nitro glycerin in her possession at the time of the PAS, although it appears this information about her medication was not disclosed at the time of the PAS assessment. -----contends the Department neglected to contact the Claimant’s physician in an attempt to corroborate that the Claimant has these conditions. The WVMI nurse, Angela Bromiley, testified that she did not contact the physician in regard to assessing whether the Claimant indeed suffers from these conditions. She added that she always tells the “member” that if they want additional information included they can contact the physician and have them fax it to her. The Department contends that because she did not have information from the physician confirming the conditions nor a prescribed medication available, she was unable to assess points for these conditions.

Arthritis – 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 Dx [diagnosis] on referral form. No RX [prescription] medication noted. Member complains of generalized pain throughout body.

The Claimant’s niece, -----, testified that the Claimant’s physician has informed her that she has arthritis. The Claimant contends that the nurse was obligated to contact the physician in order to clarify the information before assessing the Claimant in this area. The nurse testified that she did not contact the physician in order to clarify the information.

Pain - 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 DX [diagnosis] noted on referral form. No RX [prescription] medication noted. Member c/o [sic] generalized pain.

-----pointed out that the Claimant is prescribed Topamax for pain which is clearly documented on page four (4) of the PAS. The Claimant testified that she has pain every day and sometimes takes Tramadol and Lortab as well. The Claimant contends that because the PAS assessment clearly documents the use of pain medication she is eligible for a point in this area. The nurse testified that she did not assess a point in this area because it was not listed on the prescription bottle as being prescribed for pain. The PAS clearly lists the reason for the medication as pain. In addition, the physician’s Medical Necessity Evaluation Request form (D-2) lists that the Claimant has Diabetic

Neuropathy. The Department's representative, Cecilia Brown, stated that it appears that it should be a point, however, stopped short of stipulating to that during the hearing.

Transferring – which is evaluated under “Functional Levels” on the PAS. The Claimant was assessed one (1) point in this area. The WVMI nurse recorded the following on the PAS:

Member states when ambulating she uses a chair (wooden kitchen type) to assist with walking and transferring if her family or homemaker not present in home. Member states the only time she is usually [sic] without someone in the home is in the evening after caregiver leaves. She normally stays in her bedroom if she is alone. If she ambulates to the living room once there she will sit in a wooden chair that has arms on both sides which helps her with sitting and rising. Member pushes the chair along the carpet. Member uses chair when rising from couch. Member has normal full size bed. Member has air Jeanie on bed. Member is able to automatically inflate and deflate the air Jeanie which raises the head of the mattress and lowers the head of mattress as needed when rising in/out bed. Member must sleep in bed with HOB [head of bed] raised [sic] at all times due to SOB [shortness of breath]. Member holds on to bathroom counter when sitting and rising from commode [sic]. Member holds on to homemaker to step over into bathtub to sit on shower chair.

----testified that the Claimant requires one (1) person physical assistance in transferring and pointed out that most of the Claimant's comments during the PAS assessment refer to her activities when she is alone. The Claimant noted during the PAS assessment that the only time she is alone is in the evening after the caregiver leaves and that she generally stays in her room at that time. ----added that the nurse did not ask the Claimant to demonstrate this activity and claims she needed to ask the Claimant about how she transfers when the caregiver is with her. The Claimant testified that she always has someone hold under her arm and help her to transfer.

Walking – which is evaluated under “Functional Levels” on the PAS. The Claimant was assessed one (1) point in this area as needing “supervised/assistive device”. The WVMI nurse recording the following on the PAS:

Member states when walking in the home she either has assistance from family, pushes a wooden/kitchen chair along carpet or holds on to furniture.

The Claimant's niece testified that she helps the Claimant to her feet and then places her arm around the Claimant's back, walking with her in order to keep her steady. The Department contends that the nurse reviewed the PAS with the Claimant prior to leaving and they voiced no disagreement.

5) 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.

6) 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.

7) 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

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

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

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.

- 9) Aged/Disabled Home and Community Based Services Waiver Policy Manual 5.1.3.4.D MEDICAL REEVALUATION states:

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 there are four levels of care for homemaker services. Points are determined based on the individual's medical condition and functional abilities as assessed through an observation and interview process by WVMI at the time the PAS is completed. Points are assigned accordingly.
- 2) Policy is clear in that for cases where there is a medical diagnosis question, the WVMI nurse will attempt to clarify the information with the referring physician.
- 3) The Claimant was assessed at Level of Care (B) during her September 22, 2009 assessment, having received sixteen (16) points.
- 4) The WVMI nurse incorrectly assessed a point for alzheimer's, dementia, or related conditions during the PAS assessment. The Claimant clearly does not have this type of condition. As a result of this error, the Claimant's assessed points are reduced to fifteen (15) which constitutes Level (B) care. The Claimant needs at least eighteen (18) points for Level of (C) care.
- 5) The testimony and evidence provided during this hearing support that the Claimant has angina at rest, angina on exertion, and pain; therefore, an additional three (3) points are awarded for these medical conditions/symptoms. The Claimant's physician reported that she has atrial fibrillation and congestive heart failure which are associated with chest pain, and the testimony from the Claimant's witnesses also supports that she has angina at rest and exertion. The Claimant clearly reported this during the assessment and the WVMI nurse chose not to contact the physician to clarify the information. The Claimant also clearly reported that she has pain, and the PAS lists the use of Topamax for pain. The WVMI nurse incorrectly recorded that there was no prescription medication found for pain during the assessment. The testimony from the Claimant's witnesses also support that the Claimant has pain.
- 6) The additional three (3) points awarded during the hearing, when added to the Claimant's already awarded fifteen (15) points, bring the Claimant's total awarded points to eighteen (18), which supports Level of Care (C). The Department was not correct in its decision to reduce the Claimant's Level of Care from Level (C) to Level (B).

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to reduce the Claimant's Level of Care from Level (C) to Level (B).

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 25th Day of February, 2010.

**Cheryl Henson
State Hearing Officer**