



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

April 6, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 30, 2010. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your level of care hours from a Level "C" Level of Care to a Level "B" Level of Care.

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 not be reduced from a Level "C" to a Level "B" Level of Care..

It is the decision of the State Hearing Officer to Reverse the proposal of the Department to reduce your homemaker service hours under the Medicaid Title XIX, (HCB) Waiver Services program.

Sincerely,

Eric Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Kay Ikerd, RN, BoSS
WVMI
[REDACTED]

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

-----,

Claimant,

v.

Action Number: 10-BOR-657

**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 April 6, 2010 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 March 30, 2010 on a timely appeal, filed January 19, 2010.

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 Program entitled Aged and Disabled Waiver Program (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

-----, Claimant's Homemaker and Fiancé

-----,

Kay Ikerd, RN, Bureau of Senior Services (BoSS)*

Tammy Kessell, RN, West Virginia Medical Institute (WVMI)*

*participated telephonically

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 correctly assessed a reduction in the Level of Care Homemaker services hours for the Claimant from a Level “C” Level of Care to a Level “B” Level of Care.

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 , Section 501.3.2.1-503.2.2.
- D-2 Pre-Admission Screening Assessment dated December 8, 2009
- D-3 Notice of Decision dated January 5, 2010

VII. FINDINGS OF FACT:

- 1) On December 8, 2009, 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 January 5, 2010, the Claimant received a Notice of Decision, Exhibit D-3. This exhibit 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 93 hours per month (LOC “B” determination).
- 3) Tammy Kessell, West Virginia Medical Institute (WVMI) assessing nurse completed Exhibit D-2, Pre-Admission Screening assessment, as part of her medical assessment of the Claimant. Ms. Kessell testified that the Claimant was awarded a total of seventeen (17) points during the evaluation. The Claimant was awarded the following points as part of the assessment:

- Dyspena (COPD) – 1 point
- Pain – 1 point
- Mental Disorder – 1 point
- Other (Hypertension) – 1 point

Vacating during an Emergency – 1 point
Eating – 1 point
Bathing – 1 point
Dressing – 1 point
Grooming – 1 point
Bladder Incontinence – 2 points
Bowel Incontinence – 1 point
Orientation – 1 point
Transferring – 2 points
Walking – 1 point
Medication Administration – 1 point

- 4) -----, the Claimant's Homemaker and fiancé contends that an additional point should have been awarded in the area of bowel incontinence.

The following addresses the contested area:

Bowel Incontinence- ----- testified that the Claimant has frequent bowel accidents and that such accidents cause him embarrassment. ----- testified that the Claimant has frequent diarrhea and any coughing or sneezing leads to bowel accident for the Claimant. ----- purported that the Claimant has eight inches of his large intestine remaining and he has a reduce ability to remain continent. She indicated that he suffers from accidents about three to four times a week. Testimony also indicated that the Claimant's numerous surgeries on his intestines have required him to take probiotics to aide in his digestion. Further testimony from ----- indicated that she was emotional on the day of the assessment as some of the conversations related to the deteriorating condition of the Claimant. ----- stated the Claimant's overall condition varies from day to day and this conversation led her to become emotional and not fully understand the questions being asked by the assessing nurse. The Claimant related that he suffers from diarrhea on a consistent basis. Ms. Kessell testified that in order to establish the maximum number of points in the area of bowel incontinence information would have to indicate bowel incontinence of three to four times a week in the last seven days. Ms. Kessell noted in her PAS assessment, Exhibit D-2, the following information concerning bowel incontinence:

Continence/Bowel: Do you have control over bowels? Not very good, is getting worse, and the last time was, last tues., 7 days ago, had diarrhea, can cough and it may happen occasionally and uses a regular commode.

Ms. Kessell testified that ----- and -----, Homemaker RN Supervisor from CWVAS, were both present at the assessment and neither individual disputed the findings on the day of the assessment.

Testimony from the Claimant's Homemaker indicated that on the day of the assessment there may have been some confusion as to the question Ms. Kessell was relating in regards to the Claimant's bowel incontinence. Testimony revealed that the Claimant does suffer from accidents of three to four times per week and the assessing nurse documented that the Claimant reported that his continence was "not very good" at the assessment. Testimony indicated that the Claimant suffers from frequent diarrhea and that the Claimant's previous surgeries on his intestines have reduced his abilities in the area of continence of his bowel. Testimony from the Claimant's representative was credible and revealed that the Claimant's frequent diarrhea,

leakage, and bowel accidents of three to four times a week meet the requirements to constitute a deficit in the area of bowel incontinence; therefore an additional point can 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) The Claimant was assessed a total of seventeen (17) points as part of his PAS assessment completed by West Virginia Medical Institute on December 8, 2009.
- 3) As a result of evidence and testimony presented during the hearing process, one additional point may be awarded in the area of bowel incontinence. Total points awarded to the Claimant are eighteen (18).
- 4) In accordance with existing policy, an individual with eighteen (18) points qualifies as a Level "C" LOC and is therefore eligible to receive four (4) hours of homemaker services a day or One-Hundred twenty four hours of Homemaker services a month.

IX. DECISION:

It is the decision of the State Hearing Officer to reverse the decision of the Department to reduce the Claimant's Level of Care homemaker services hours from a Level "C" LOC to a Level "B" LOC.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ day of April 2010.

**Eric L. Phillips
State Hearing Officer**