



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

October 12, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 30, 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
[REDACTED]
-----, Legal Aid

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

-----,

Claimant,

v. Action Number: 10-BOR-811

**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 September 30, 2010 on a timely appeal filed February 10, 2010.

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
-----, Paralegal, Legal Aid, Claimant's representative
-----, Claimant's witness
-----, Claimant's witness
-----, Claimant's witness

Kay Ikerd, Bureau of Senior Services, Department representative
Karen Keaton, Department's witness

It should be noted that the Department 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 Pre-Admission Screening (PAS) assessment completed January 26, 2010, seven (7) pages
- D-3 Notice of Decision dated February 2, 2010

Claimant's Exhibits:

- C-1 RN Assessment form dated September 11, 2009, three (3) pages
- C-2 Letter from [REDACTED] dated April 6, 2010

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 January 2010.
- 2) A West Virginia Medical Institute (WVMI) registered nurse, Karen Keaton, completed the Claimant's Pre-Admission Screening (PAS) medical assessment on January 26, 2010 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 seventeen (17) points during the PAS assessment, which places her in Level (B) care. For Level of Care (C) the Claimant would need at least eighteen (18) points.
- 3) The Claimant contends that an additional point should be awarded in the area of bladder incontinence. The Claimant was assessed as being "occasionally incontinent" during the assessment and was awarded one (1) point. An additional one (1) point, for a total of two (2) points, is possible if an individual is assessed as being "totally incontinent". The WVMI nurse recorded the following on the PAS during the assessment:

Wears pads when she goes out. Urine leakage with coughing. Up and down through night to urinate. Uses bedside commode. Wets self on avg 1 x/wk. (one time per week).

The Claimant's homemaker at the time the PAS was completed, ----, testified that the Claimant was incontinent of bladder at least three (3) times per week during the period in question. She added that she washed the Claimant's laundry and always saw evidence that she had soiled her clothing. She stated that the Claimant has difficulty getting to the bathroom due to being partially paralyzed which slows her ability to walk. She testified that she has witnessed the Claimant's bladder accidents first-hand when she is with her. She added that she has observed where the Claimant had washed her own clothes out after having accidents as well. She provided that she placed pads on the Claimant's chairs and that she also wears pads at night. Additionally, she stated that although she was present in the home when the PAS assessment was completed, the WVMI nurse did not review the Claimant's answers with her, and that if she had known of the documented answers she would have explained that the Claimant has bladder incontinence more than three (3) times per week.

----, the Claimant's niece, testified that she sees the Claimant once a month, and has observed that she has accidents daily and often more than once a day. She provided that the Claimant suffered a stroke in February 2001, and as a result she gets confused, anxious and forgetful. She offered that the Claimant may not have clearly understood what she was being asked in regard to her bladder incontinence.

The Claimant's Registered Nurse (RN) Case Manager, ----, works for Pro-Careers Home Health Agency. She testified that she completed an RN Assessment form (C-1) on September 11, 2009 for the Claimant in which she documented her functional abilities at that time. ----testified that the Claimant was rated as being partially incontinent at the time of that assessment, based on the fact that she did not have one hundred percent (100%) bladder incontinence. She explained that for her organization to consider the Claimant totally incontinent, she would need to be bedridden with complete bladder incontinence every time she emptied her bladder. The form documented that the Claimant had issues with "dribbling", and that she wears pads. This form was completed more than four (4) months prior to the PAS assessment evaluation, and was not made available to the WVMI nurse at the time her assessment was completed. It will be given less weight because the Department did not have access to it during its evaluation.

The Claimant testified that she does not recall telling the nurse at the time of assessment that she has bladder incontinence once a week. She appeared to be confused as to what the Department considers as bladder incontinence. She testified that she has accidents three (3) or more times per week, although she may not "wet" or soil her clothes each of these times due to her use of protective pads. She added that she wears pads daily and goes through four (4) or more daily. The Claimant appeared to get somewhat confused during testimony when referring to timeframes involved in her bladder incontinence.

The WVMI nurse testified that she found the Claimant to be alert and oriented on the date of the assessment, and had no indication that she would be unable to answer questions accurately. She testified that when evaluating bladder incontinence, she usually asks the individual how many times they find themselves "wet" per week. She also testified that she considered stress incontinence, described as leakage when

coughing, as not “true” incontinence. She added that she does not usually consider this type of stress incontinence when determining the number of weekly incidents unless the incidents occur often. However, she did not ask the Claimant how often the stress incontinence from coughing occurred. In regard to the Claimant’s homemaker being present for the assessment, she stated that she could not confirm whether she was present for the entire assessment, or whether she reviewed the Claimant’s answers with her prior to the conclusion of the assessment.

4) 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.

5) 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.

6) 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

7) 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
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 (B) during her January 26, 2010 assessment, having received seventeen (17) points. To be assessed at Level of Care (C) the Claimant must be assigned at least eighteen (18) points during the assessment.
- 3) The totality of the testimony and evidence provided during this hearing support that the Claimant has bladder incontinence more than three (3) times per week, or total bladder incontinence, and one (1) additional point is awarded as a result.
- 4) The evidence shows that the Department did not clearly inform the Claimant in regard to the criteria it used when considering whether an individual has had an episode of bladder incontinence. Without a clear understanding of what constitutes a bladder incontinence episode, an individual is unable to provide an accurate response. This has been shown to be the case in this situation, and explains why the Claimant’s testimony during the hearing does not reflect the responses documented by the Department at the time of the assessment.
- 5) The WVMI nurse testified that she does not normally consider stress incontinence in determining the number of times weekly an individual has incontinence unless it occurs frequently. The Claimant clearly reported during the assessment that she has stress incontinence when she coughs; however, the WVMI nurse did not ask further questions of her in order to determine whether she would consider her episodes of stress incontinence when totaling the number of weekly episodes. The stress incontinence episodes were not considered in her determination.

- 6) Testimony from the Claimant's witnesses as well as written evidence support that she had bladder incontinence more than three (3) times per week at the time of the assessment.
- 7) The additional one (1) point awarded during the hearing, when added to the Claimant's already awarded seventeen (17) 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 12th Day of October, 2010

**Cheryl Henson
State Hearing Officer**