



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

August 3, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 20, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker hours from Level C to Level B care.

In arriving at a decision, the State Hearings 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. 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 submitted at your hearing revealed that you no longer meet the criteria to continue receiving services under Level C care.

It is the decision of the State Hearings Officer to **Uphold** the proposal of the Department to reduce your homemaker hours to Level B care.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

cc: Chairman, Board of Review
Bureau of Senior Services
West Virginia Medical Institute
[REDACTED]

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1153

**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 July 20, 2011 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 a timely appeal, filed April 21, 2011.

It should be noted here that the claimant's benefits under the Aged/Disabled Waiver program have continued under Level C care pending a decision.

II. PROGRAM PURPOSE:

The program entitled Aged/Disabled Waiver (ADW) is administered by the West Virginia Department of Health and 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:

-----, Representative for Claimant

-----, Case Manager, [REDACTED]

-----, Homemaker RN, [REDACTED]

Kay Ikerd, RN, Bureau of Senior Services (testified by phone)

Brenda Myers, RN, West Virginia Medical Institute (testified by phone)

Presiding at the Hearing was Kristi Logan, 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's proposal to reduce Claimant's homemaker hours is correct.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Waiver Policy Manual § 501.3.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community Based Waiver Policy Manual § 501.3.2
- D-2 Pre-Admission Screening dated April 14, 2011
- D-3 Notice of Decision dated April 18, 2011

VII. FINDINGS OF FACT:

- 1) Claimant was re-evaluated for medical eligibility for the ADW program on April 14, 2011. A Pre-Admission Screening Form (PAS) was completed that date by Brenda Myers, RN with the West Virginia Medical Institute (WVMI).

Claimant received a total of 14 points on the April 2011 PAS, reducing her level of care from Level C to Level B (D-2).

- 2) -----, Claimant's daughter, testified that her mother was hospitalized in the past year for back pain and was in a nursing home for two (2) months for physical therapy. ----- stated Claimant had an accident as a teenager and has had back pain since. ----- stated Claimant takes Meloxicam for pain and should have received a point for pain.

----- stated Claimant has been admitted to psychiatric facilities on two (2) occasions for a chemical imbalance and takes four (4) medications to treat the condition. ----- stated Claimant should have been given a point for orientation due to her mental conditions and memory problems.

----- testified that her sister lives with Claimant and her sister helps their mother with transferring and walking. ----- stated she also helps her mother transfer and walk when she visits. They are fearful of Claimant falling and they also lead their mother when she uses her walker.

----- stated her mother has better days than others, more bad days than good. ----- stated her mother's condition has not improved over the last year.

- 3) Brenda Myers, RN with WVMH testified to the PAS she completed for Claimant in April 2011. Ms. Myers stated Claimant was oriented to person, place and time during the assessment and specifically denied periods of disorientation during "spikes" in her insulin levels. Ms. Myers stated there was no mental confusion observed, explaining disorientation is a separate condition than anxiety and depression.

Ms. Myers testified that Claimant uses a lift chair and an adjustable bed to aid in transferring and walked with the use of a cane. Ms. Myers stated she did not observe any physical assistance in transferring or walking nor was the need for physical assistance disclosed during the assessment.

Ms. Myers stated Meloxicam is an anti-inflammatory medication used to treat arthritis and she awarded Claimant a point for arthritis because of her prescription for Myloxicam as her physician did verify a diagnosis for arthritis. Ms. Myers stated Meloxicam can be prescribed for pain related to arthritis as well as for inflammation.

- 4) Aged/Disabled Home and Community Based Waiver Manual § 501.3.2.1 and 501.3.2.2 states:

- #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
- #35 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) Policy dictates that an individual's Level of Care for the Aged/Disabled Waiver Program is determined by the number of points obtained on the PAS assessment tool. Claimant was awarded 14 points as the result of a PAS completed by WVMi in April 2011 in conjunction with her annual medical evaluation.
- 2) Claimant was awarded a point for arthritis based on the prescription Myloxicam, which is which is used for pain and inflammation brought on by the arthritis. Claimant should have been awarded a point for pain as well as arthritis based on the use of Myloxicam. One (1) additional point will be awarded for pain.
- 3) Testimony indicated Claimant suffers from symptoms of depression and anxiety, which are treated by medications and also experiences memory loss. However, orientation refers to an individual's mental clarity and the ability to recognize their self and their surroundings. Claimant exhibited no signs of confusion and denied experiencing bouts of disorientation to the WVMi nurse. No additional points can be awarded in this area.
- 4) Claimant's need for physical assistance in transferring and walking was not made known to the WVMi nurse during the assessment nor was physical assistance observed. Claimant uses assistive devices when transferring and walking and was correctly assessed at a level 2 in these areas. No additional points can be awarded.
- 5) With the addition of a point for pain, Claimant's total points as derived from the PAS are 15, which is Level B care. Claimant no longer meets the medical criteria to continue receiving services at Level C care.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to reduce Claimant's homemaker hours to Level B care. One (1) additional point is awarded to Claimant for pain.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 3rd day of August 2011.

**Kristi Logan
State Hearing Officer**