



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

September 6, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 25, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker hours under the Aged/Disabled Waiver program 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 medical criteria to continue receiving Aged/Disabled Waiver services at 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-1464

**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 August 25, 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 June 10, 2011.

It should be noted here that the claimant's benefits under the Aged/Disabled Waiver program have continued at 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:

-----, Claimant

-----, Witness for Claimant

-----, Case Manager,

-----, Homemaker RN,

Kay Ikerd, RN, Bureau of Senior Services (testified by phone)
Lisa Goodall, 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 under the Aged/Disabled Wavier program is correct.

V. APPLICABLE POLICY:

Aged/Disabled Waiver Services Policy Manual § 501.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Waiver Services Policy Manual § 501.3
- D-2 Pre-Admission Screening dated May 27, 2011
- D-3 Notice of Decision dated June 2, 2011

VII. FINDINGS OF FACT:

- 1) Claimant was reevaluated for medical eligibility for the ADW program on May 27, 2011. A Pre-Admission Screening (PAS) was completed that date by Lisa Goodall, RN with the West Virginia Medical Institute (WVMI) (D-2).

Claimant was awarded 13 points on the PAS, reducing her homemaker hours from Level C to Level B care.

- 2) -----, Claimant's case manager, stated they were contesting Claimant not receiving a level 2 in eating, a level 3 in communication, a level 2 in walking and a level 2 in bowel incontinence.

-----testified Claimant has difficulty cutting her foods due to a history of a wrist fracture and surgery. -----stated the fracture and surgery were documented on the PAS.

-----stated Claimant has a hearing problem which hinders her communication with others. She stated Claimant does not use hearing aids and it is difficult to get clear

answers from Claimant. -----stated she is unsure if this is solely due to her hearing loss as mental confusion is present in Claimant.

-----testified Claimant has seizures and dizziness requiring her to hold onto the walls and furniture when walking. She stated Claimant also uses a rolling walker in the home to ambulate.

-----stated Claimant has bowel incontinence more than one (1) time a week as stated in the PAS. -----stated she attributes Claimant's hearing loss and communication issues as the reason why Claimant advised the WVMi nurse of the frequency of her bowel incontinence as once a week.

- 3) -----, Homemaker RN testified Claimant's plan of care for the homemaker includes physical assistance with walking due to her seizure disorder and dizziness. ----- stated Claimant also has a history of falls, which have resulted in hip fractures and hip replacements. -----stated each time she has visited Claimant, she has noticed her rolling walker in the home.

-----testified that Claimant's fractured wrist was not set properly and she still experiences problems because of this. -----stated it causes weakness and Claimant also has hand tremors which prevent her from cutting her own foods.

-----stated Claimant has bowel incontinence at least three (3) times a week. ----- felt Claimant's hearing and communication problems prevented her from answering the WVMi nurse correctly during the assessment. -----stated Claimant is embarrassed about her hearing loss and will often not ask individuals to repeat themselves if she does not understand what is being said.

- 4) -----, Claimant's daughter testified she visits her mother daily to check on her. ----- stated her mother needs the homemaker hours she is receiving and could not manage with a decrease. -----stated her mother uses her walker more and more and she has noticed mental confusion in her mother for months.

- 5) Lisa Goodall, RN with WVMi testified to the PAS she completed in May 2011 for Claimant. Ms. Goodall denied anyone mentioning Claimant's inability to cut her own foods. She stated she was advised that Claimant had bowel incontinence only once a week and these areas were not contested by those present during the assessment.

Ms. Goodall stated she observed Claimant walk independently during the assessment and was advised that her rolling walker was used mostly outside of the home. Ms. Goodall stated she evaluates an individual's functionality in the home, and because she did not use an assistive device in the home to walk, she was rated a level 1 for walking.

Ms. Goodall stated she was aware of Claimant's hearing problems and rated her as a level 2 in hearing; impaired/correctable. Ms. Goodall stated she was advised Claimant

had not had her hearing checked and did not use hearing aids so she could not determine if Claimant's hearing could be corrected with aids.

Ms. Goodall testified that Claimant's hearing loss was evaluated under hearing, and cannot be considered when evaluating her ability to communicate. Ms. Goodall stated Claimant spoke clearly and answered her questions relevantly during the assessment. In order to receive a deficit in communication, Ms. Goodall stated Claimant would have to be physically unable to express her wants and needs such as the inability to speak or require sign language.

Ms. Goodall testified that according to the medical necessity form completed by Claimant's physician, she was given diagnoses for dementia, COPD and carotid stenosis. While going over this information at the assessment, Ms. Goodall stated Claimant's representatives advised these diagnoses were incorrect. Ms. Goodall stated she later verified with the physician that Claimant did not have a diagnosis of dementia, COPD or carotid stenosis. However, dementia remained on the PAS which should have been removed and Ms. Goodall was unable to determine if a point for dementia was considered in the total number of points from the PAS.

6) Aged/Disabled Waiver Services Policy 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 13 points as the result of a PAS completed by WVMi in May 2011 in conjunction with her annual medical evaluation.
- 2) Claimant and her representatives present during the assessment failed to disclose to the WVMi nurse that Claimant required assistance in cutting foods. The WVMi nurse was advised Claimant had bowel accidents once weekly, and not three (3) times weekly as testified to in the hearing. The WVMi nurse can only make a determination of Claimant's condition based on her observations of Claimant the day of the assessment and the information that is provided to her. Based on the information given the WVMi nurse during the assessment, no additional points can be awarded in the areas of eating and bowel incontinence.
- 3) Claimant was able to participate in the assessment by answering the nurse's questions and her speech was understandable. Claimant's hearing loss is not a consideration in determining communication barriers. No additional points can be awarded in this area.
- 4) The WVMi nurse observed Claimant's rolling walker in the home the day of the assessment and documented that Claimant "uses [it] mostly outside of the apartment". Although Claimant was observed walking without an assistive device, the nurse acknowledged that Claimant did at times use her rolling walker in the home. Claimant will be awarded one (1) additional point for a level 2 in walking.
- 5) While information on the PAS revealed that the Claimant received 14 points, there was a question as to whether or not the Claimant had actually been awarded a point for dementia due to an incorrect diagnosis. However, this is a moot issue as the addition of a point in dementia would not reinstate Claimant's level of care to Level C.
- 6) Claimant no longer meets the medical criteria as found in policy to continue receiving homemaker 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 will be awarded for a Level 2 in walking.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 6th day of September 2011.

Kristi Logan
State Hearing Officer