



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 20, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 14, 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 D to Level C.

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 WVM (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 required to continue receiving services at Level D care.

It is the decision of the State Hearings Officer to **Uphold** the proposal of the Department to reduce your homemaker hours under the Aged/Disabled Waiver program to Level C 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-1639

**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 September 14, 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 July 15, 2011.

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

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

Sara Birckhead, Bureau of Senior Services
Teresa McCallister, RN, West Virginia Medical Institute

Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the Board of Review.

All participants testified by phone.

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 May 31, 2011
- D-3 Notice of Decision dated July 5, 2011

VII. FINDINGS OF FACT:

- 1) Claimant was re-evaluated for medical eligibility for the ADW program on May 31, 2011. A Pre-Admission Screening Form (PAS) was completed that date by Teresa McCallister, RN with the West Virginia Medical Institute (WVMI).

Claimant received a total of 25 points on the May 2011 PAS, reducing her level of care from Level D to Level C (D-2).

- 2) -----, Claimant's case manager, testified that Claimant has leakage from her catheter. -----stated she has taken Claimant donated incontinence supplies to use when the catheter leaks. -----stated Claimant's catheter frequently comes out and Claimant must wear incontinence undergarments while she waits for the nurse to reinsert the catheter.

-----testified she was present during the assessment and did not contest any of the WVMI nurse's findings during that time. -----stated she was unsure if any additional points would be awarded Claimant for the leakage from the catheter, explaining why this information was not given during the assessment.

- 3) Claimant testified that her catheter leaks and the frequency is increasing. Claimant stated her catheter will come out with no exertion and she is totally incontinent until the nurse comes to reinsert the catheter. Claimant stated she cannot walk and is unable to go to the bathroom.
- 4) Teresa McCallister, RN with WVMi testified to the PAS she completed on Claimant in May 2011. Ms. McCallister stated she was unaware of any leakage from Claimant's catheter. Ms. McCallister stated she knew Claimant's catheter was changed weekly and that Claimant took medications for incontinence. Based on the information provided during the assessment, Ms. McCallister stated she assessed Claimant as a Level 4 in urinary incontinence due to the catheter.
- 5) 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 25 points as the result of a PAS completed by WVMI in May 2011 in conjunction with her annual medical evaluation.
- 2) Claimant was rated a level 4 in urinary continence based on her use of a catheter. The WVMI nurse was not advised of any leakage from the catheter and could only make a determination of Claimant's functional abilities based on the information made known to her during the assessment.
- 3) Based on the information provide to the WVMI nurse during the May 2011 medical assessment, Claimant was correctly rated as a level 4 in urinary incontinence.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to reduce Claimant's homemaker hours from Level C to Level D care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 20th day of September 2011.

Kristi Logan
State Hearing Officer