



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 23, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 20, 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 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 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 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-1643

**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 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 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,

-----, Homemaker RN,

-----, Witness for Claimant

Sara Birckhead, 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 Pre-Admission Screening dated July 6, 2011
- D-2 Notice of Decision dated July 11, 2011

VII. FINDINGS OF FACT:

- 1) Claimant was re-evaluated for medical eligibility for the ADW program on July 6, 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 24 points on the July 2011 PAS, reducing his level of care from Level D to Level C (D-2).

- 2) -----, Claimant's case manager, stated they were contesting Claimant not receiving a level 3 for bathing and dressing, a level 3 in wheeling and a level 3 in urinary incontinence.

-----testified that Claimant is not able to participate in his bathing due to his lack of hand grip. -----stated someone may place a washcloth in Claimant's hand, but he is unable to actually scrub his body with it. -----stated Claimant is at times unable to participate at all in dressing, needing total care during those times.

-----testified Claimant has leakage from his catheter daily and throughout the night. ----- felt like Claimant did not consider his catheter leaking during the night when he advised the WVMi nurse that leakage only occurred two (2) times a week.

-----stated Claimant needs occasional assistance maneuvering his wheelchair due to muscle spasms. When having a muscle spasm, ----- stated Claimant is unable to operate his wheelchair at all.

- 2) -----, homemaker RN testified that Claimant needs assistance in operating his wheelchair during muscle spasms. -----stated Claimant takes medication for these spasms and the dosage has been increased over the past year due to an increase in the frequency in the spasms. -----stated she has seen Claimant's homemaker help him over inclines in doorways. -----stated due to Claimant's lack of strength in his hands, he cannot turn doorknobs and cannot hold a washcloth to bathe himself effectively. ----- stated the washcloth would just rest in Claimant's hand as he would not be able to grip the washcloth to clean himself.
- 3) -----, Claimant's mother, testified Claimant cannot open doors as he cannot turn doorknobs and cannot get his wheelchair close enough to reach them. -----stated someone always stays with Claimant as he cannot be left alone.
- 4) Claimant testified that when his blood pressure drops, he will pass out and someone must always stay with him. Claimant stated his muscle spasms are so severe that his legs are strapped into his wheelchair. Claimant stated during a spasm, he cannot operate his wheelchair.

Claimant stated he cannot lift both arms up at the same time as he does not have muscle strength in his sides and he will fall over. Claimant stated he cannot remember all of the questions asked of him by the WVMi nurse and felt like he did not understand them correctly at the time.

- 5) Brenda Myers, RN with WVMi testified to the PAS she completed on Claimant in July 2011. Ms. Myers stated Claimant advised her during the assessment that he was able to wash his face, arms and chest. Claimant also stated he could lift his arms up for the homemaker to place his shirts on. Ms. Myers stated the ability to participate in any way constitutes physical assistance and not total care for that particular activity. Ms. Myers stated Claimant was able to feed himself and demonstrated raising his arms over his head so she had no reason to doubt that he assisted in bathing and dressing.

Ms. Myers testified that Claimant did not tell her that at times he needed help operating his wheelchair due to muscle spasms and had told her that he could get through all doorways in his home. Ms. Myers stated she discussed the catheter leakage in detail with Claimant and was advised that leakage occurred twice a week. Ms. Myers stated there was no contradictory information provided on Claimant's behalf subsequent to the assessment regarding his ratings in bathing, dressing, wheeling or urinary incontinence.

- 6) 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 24 points as the result of a PAS completed by WVMi in July 2011 in conjunction with his annual medical evaluation.
- 2) Claimant advised the WVMi nurse that he could participate in bathing and dressing. Claimant denied needing any assistance in operating his wheelchair in his home and stated his catheter leaked only two (2) times a week.
- 3) The WVMi nurse evaluated Claimant based on the information that was given to her during the assessment. There was no additional documentation submitted to WVMi in the two week time period following the Notice of Decision on Claimant's behalf to support the testimony given at the hearing. The WVMi nurse can only make a determination of Claimant's functional abilities based on the information made known

to her at the time of the assessment any change in Claimant's condition since the July 2011 medical evaluation cannot be considered.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to reduce Claimant's homemaker hours under the Aged/Disabled Waiver program to Level C care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 23rd day of September 2011.

Kristi Logan
State Hearing Officer