



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

December 5, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 22, 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 WVMH (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 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-1958

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondents.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on November 22, 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 September 6, 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.

III. PARTICIPANTS:

-----, Claimant

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

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

-----, Homemaker

Kay Ikerd, RN, 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 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 August 18, 2011
- D-3 Notice of Decision dated August 23, 2011

VII. FINDINGS OF FACT:

- 1) Claimant was reevaluated for medical eligibility for the ADW program on August 18, 2011. A Pre-Admission Screening (PAS) was completed that date by Teresa McCallister, RN with the West Virginia Medical Institute (WVMI) (D-2).

Claimant received fourteen (14) points on the August 2011 PAS, reducing her level of care from Level C to Level B (D-3).

- 2) -----, Case Manager with [REDACTED] stated they were contesting Claimant not receiving points for angina on exertion, mental disorder and a level 3 in walking and wheeling.

-----stated Claimant was given a point for angina at rest due to her prescription for nitroglycerin. -----felt Claimant should have also been given a point for angina on exertion (D-2).

-----testified Claimant only walks in her bedroom, which is small with several pieces of furniture for her to hold onto. Claimant uses her wheelchair throughout the rest of her

home. -----stated the rest of Claimant's house is sparsely furnished so that she can move around in her wheelchair.

-----stated Claimant's physician failed to address her mental status at this reevaluation and she could not produce a diagnosis or prescription for the additional point.

- 3) -----, Claimant's homemaker, testified that Claimant stays in her wheelchair all the time. She has witnessed Claimant almost fall when she has tried to walk in the bedroom, which is the only room that she is able to walk around in. -----stated Claimant cannot maneuver her wheelchair using her arms due to nerve damage. -----stated Claimant propels the wheelchair using one foot. -----stated she assists Claimant with her wheelchair through doorways and over thresholds.
- 4) -----, Homemaker RN, testified Claimant cannot open her front door or get her wheelchair over the threshold. Ms. Rose stated Claimant requires assistance in wheeling through doorways.
- 5) Claimant testified the reason she is able to walk in her bedroom is because there is enough furniture in there for her to hold onto. Claimant stated she has a potty chair, but does not like to use it if she is home alone. Claimant stated the only time she walks is in the bedroom to go to the adjoining bathroom. Claimant stated she cannot push her wheelchair with her arms, but uses one foot to push herself around.
- 6) Teresa McCallister, RN with WVMi testified to the PAS she completed for Claimant in August 2011. -----could not recall the discussion on Claimant's angina specifically, only that Claimant denied any chest pain once she started a new medication. -----stated she gave Claimant a point for angina at rest due to her prescription for nitroglycerin.

-----stated she observed Claimant walking in her bedroom holding onto furniture and using a cane. Claimant used her wheelchair throughout the rest of the home. -----observed Claimant maneuver her wheelchair using her feet and stated Claimant denied needing assistance with her wheelchair.

- 7) 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 14 points as the result of a PAS completed by WVMi in August 2011 in conjunction with her annual medical evaluation.
- 2) Testimony indicated Claimant received a point for angina at rest due to a prescription for nitroglycerin. It is reasonable that Claimant would also experience angina at exertion and should have been given a point in this area. One (1) additional point will be awarded for angina at exertion.
- 3) Claimant's witnesses testified Claimant is able to walk with the assistance of her cane and by holding onto furniture for support. Claimant has the physical ability to walk with an assistive device and there was no mention of Claimant's need for physical assistance to walk. Claimant was correctly evaluated as a Level 2 for walking. Additionally, Claimant must be a Level 3 or higher to receive a Level 3 in wheeling. No additional points can be awarded in these areas.
- 4) With the addition of a point for angina at exertion, Claimant has fifteen (15) points for her August 2011 PAS. Claimant no longer meets the medical criteria to continue receiving 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 added for angina at exertion.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 5th day of December 2011.

Kristi Logan
State Hearing Officer