



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Earl Ray Tomblin
Governor

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

May 6, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 5, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker service hours under the Aged/Disabled (HCB) Title XIX Waiver Services Program.

In arriving at a decision, the State Hearing 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. One of these regulations specifies that for the Aged/Disabled Waiver Program, 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 Services Waiver Policy and Procedures Manual 501.3)

Information submitted at your hearing reveals that you continue to require the degree of care and services necessary to qualify medically for the Aged/Disabled Waiver Program and your documented medical conditions confirm that your Level of Care should be a Level "C" rating. As a result, you are eligible to receive four (4) hours per day or 124 hours per month of homemaker services.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to decrease your Level of Care under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
Quality Care Management

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

-----,

Claimant,

v.

Action Number: 11-BOR-444

**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 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 telephonically on May 5, 2011 on a timely appeal filed December 27, 2010 and received by the Hearing Officer on January 27, 2011. The hearing was originally scheduled for March 2, 2011, but was rescheduled due to the Hearing Officer's illness. The hearing was then scheduled for April 6, 2011, but was requested at the request of the Claimant.

It should be noted that the Claimant's benefits have continued pending a hearing decision.

II. PROGRAM PURPOSE:

Under Section 2176 of the Omnibus Budget Reconciliation Act of 1981, states were allowed to request a waiver from the Health Care Financing Administration (HCFA) so that they could use Medicaid (Title XIX) funds for home and community-based services. The program's target population is individuals who would otherwise be placed in an intermediate or skilled nursing facility (if not for the waiver services). Services offered under the Waiver Program will include: (1) chore, (2) homemaker and (3) case management services. West Virginia has been offering the Waiver Services Program since July, 1982 to those financially eligible individuals who have been determined to need ICF level care but who have chosen the Waiver Program services as opposed to being institutionalized.

III. PARTICIPANTS:

-----, Claimant
-----, Homemaker RN, Select In-Home Services
-----, RN, Select In-Home Services
-----, Homemaker, Select In-Home Services
-----, Claimant's granddaughter
Kay Ikerd, RN, Bureau of Senior Services
Barbara Plum, RN, West Virginia Medical Institute

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 501.3.2.1 and 501.3.2.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 501.3.2.1 and 501.3.2.2
- D-2 Pre-Admission Screening (PAS) assessment completed on December 10, 2010
- D-3 Notice of Decision dated December 28, 2010

VII. FINDINGS OF FACT:

- 1) The Claimant, a recipient of Aged/Disabled Waiver (ADW) Medicaid benefits, underwent an annual reevaluation to verify continued medical eligibility for the program.
- 2) West Virginia Medical Institute (WVMI) Registered Nurse Barbara Plum completed a Pre-Admission Screening (PAS) medical assessment (D-2) on December 10, 2010 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 18 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care "C" - eligible for four (4) hours per day or 124 hours per month of homemaker services. It should be noted that the Claimant previously qualified for a

Level of Care “D”- eligible for five (5) hours per day or 155 hours per month of homemaker services.

- 3) The Claimant was sent notification on December 28, 2010 (D-3) advising her of the proposed reduction in homemaker service hours.
- 4) The Claimant and her witnesses contended that additional points should be awarded in the following areas:

Decubitus- ----, Homemaker RN with Select In-Home Services, testified that the PAS indicates the Claimant has cellulitis on her lower legs with some open areas. ----stated that the Claimant has cellulitis and sores on other areas of her body as well.

The WVMi Nurse testified that a decubitus is a pressure point ulcer, while cellulitis sores are not considered pressure ulcers.

Total care with dressing- ----testified that the Claimant requires “nearly total care” with dressing and needs assistance with all dressing tasks.

The WVMi Nurse testified that the Claimant - during the assessment – reported that she could put her shirts on over her head and place her arms through the sleeves. However, the Claimant’s Homemaker assisted her in putting on other articles of clothing. Therefore, the Claimant was rated as requiring physical assistance with dressing.

One-person assistance with transferring- ----testified that the Claimant spends the majority of her time in a lift chair and requires hands-on assistance with transfers if she sits anywhere else.

The WVMi Nurse testified that the Claimant reported sleeping in her lift chair, and was able to get up from the chair on her own during the assessment.

----and the Claimant testified that the Claimant needs physical assistance with entering/exiting her bathtub. However, she was rated as requiring physical assistance with bathing on the PAS.

----testified that the Claimant had previously been very ill, however, her condition has since improved.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Sections 501.3.2.1 and 501.3.2.2 (D-1): There will be four levels of care for clients of ADW homemaker services. Points will be determined based on the following sections of the PAS:

- #23- Medical Conditions/Symptoms- 1 point for each (can have total of 12 points)
- #24- Decubitis- 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
- #34- 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.
- 2) The Claimant was awarded 18 points as the result of a PAS completed by WVMi in December 2010 in conjunction with her annual medical evaluation.
- 3) As a result of information presented during the hearing, no additional points are awarded to the Claimant. The WVMi Nurse testified that cellulitis is not considered a pressure ulcer, therefore no points can be awarded for decubitus. During the assessment, the Claimant informed the WVMi Nurse that she was able to put on shirts, so she was correctly assessed as requiring physical assistance with dressing. The Claimant was able to transfer using her lift chair during the assessment and was correctly rated as requiring an assistive device to transfer on the PAS.
- 4) The Claimant's total number of points remains at 18, rendering her eligible to receive a Level "C" Level of Care.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled, Title XIX (HCB) Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 6th Day of May, 2011.

Pamela L. Hinzman
State Hearing Officer