



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General

Earl Ray Tomblin
Governor

Board of Review
1400 Virginia Street
Oak ---, WV 25901

Rocco S. Fucillo
Cabinet Secretary

October 15, 2012

Dear Ms. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held October 10, 2012. 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 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. These regulations state 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 § 501.5).

The information submitted at your hearing revealed that you were correctly assessed as requiring Level B care.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to reduce your homemaker hours to Level B care.

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Bureau of Senior Services
Raleigh County Commission on Aging

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1911

**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 held on October 10, 2012, by telephone conference. This hearing was held in accordance with the provisions found in the West Virginia Department of Health and Human Resources Common Chapters Manual, Chapter 700. This fair hearing was convened on a timely appeal, filed July 30, 2012.

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 Aged/Disabled Waiver (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:

---- ----, Representative for Claimant

---- ----, Witness for Claimant

---- ----, Case Manager, [REDACTED] County Commission on Aging

---- ----, Homemaker RN, [REDACTED] County Commission on Aging

Kay Ikerd, RN, Bureau of Senior Services

Stephanie Schiefer, RN, West Virginia Medical Institute

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 Waiver Services Policy Manual § 501.5.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Waiver Services Policy Manual § 501.5.1
- D-2 Pre-Admission Screening dated July 2, 2012
- D-3 Notice of Decision dated July 10, 2012
- D-4 Pre-Admission Screening dated July 25, 2011

Claimants' Exhibits:

- C-1 Diagnoses on Prescription Pad dated September 6, 2012, from ---- ----, MD

VII. FINDINGS OF FACT:

- 1) Claimant was re-evaluated for medical eligibility for continued participation in the Aged/Disabled Waiver program on July 2, 2012. A Pre-Admission Screening (PAS)(D-2) was completed that date by Stephanie Schiefer, RN, with West Virginia Medical Institute (WVMI).

Claimant received fifteen (15) points on the July 2012 PAS (D-2), which equates to a Level B care. A minimum of eighteen (18) points is required to receive Level C care (D-1).

- 2) ---- ----, Claimant's Case Manager with [REDACTED] County Commission on Aging, stated the areas in contention were dyspnea, pain, contractures, eating and wheeling. Ms. ---- stated Claimant was given points for the medical conditions dyspnea, pain and contractures on the 2011 PAS (D-4). Ms. ---- stated the WVMI nurse gave Claimant a point for paralysis on this year's assessment without a current physician's diagnosis

based on the 2011 PAS, and Ms. ---- argued points for dyspnea, pain and contractures should be given as well. Claimant does not like to take prescription pain medications, but takes over-the-counter medication for pain. Ms. ----, who was present for the assessment, stated the WVMI nurse was made aware of this fact. Ms. ---- provided a current diagnosis for pain for Claimant from Dr. ---- (C-1).

Ms. ---- stated Claimant cannot reach utensils or plates where they are stored in the kitchen as she is wheelchair bound. Claimant requires assistance with meal preparation and in obtaining items out of her reach.

Ms. ---- stated Claimant needs assistance in maneuvering her wheelchair through the threshold of her bedroom. If the batteries to her power wheelchair run out, Claimant's parents assist her with the wheelchair.

- 3) ---- ----, Homemaker RN, testified that the WVMI nurse did not examine Claimant's feet, which is where her contractures are located. Ms. ---- argued Claimant should have been given points for contractures, the diagnosis of which was verified with Claimant's physician the previous year.
- 4) ---- ----, Claimant's mother, testified that Claimant mostly uses her power wheelchair outside of the home. Ms. ---- stated their home is not big enough to accommodate the power wheelchair, and Claimant requires occasional assistance in maneuvering her manual wheelchair in the home.
- 5) Stephanie Schiefer, RN with WVMI, testified to the findings of the July 2012 PAS. Ms. Schiefer awarded Claimant a point for paralysis based on the previous year's diagnosis. Ms. Schiefer stated paralysis is not a condition that is likely to improve, such as pain and dyspnea. Ms. Schiefer stated she did not give a point for contractures, not only because there was no current diagnosis for the condition, but also because contractures were denied once the condition was explained.

Ms. Schiefer stated Claimant could feed herself and cut her own foods and was rated a level 1 in eating – self/prompting. Meal preparation is not considered in evaluating this area, only an individual's ability to obtain nourishment. Ms. Schiefer stated Claimant denied needing assistance with maneuvering her wheelchair in the home.

- 5) Pertinent parts of the July 2011 PAS (D-4) document:

Dyspnea: The client and family state she gets SOB [shortness of breath] when she tries to walk in her leg braces. Confirmed via call to PCP [primary care physician].

Pain: The client has R[ight] shoulder pain. She states she has not discussed with her physician. Confirmed via call to PCP.

Contractures: The client cannot demonstrate movement of her ankles, feet or toes bilaterally. Confirmed via call to PCP.

Eating: The client cannot reach the top cabinets, to remove dishes/glasses for a drink, due to lack of function of bilateral LE [lower extremities], and pain in her R shoulder. She is able to cut her meats with a knife, as well as hold and use a spoon/fork.

Wheeling: The client requires situational assistance, to transfer over the threshold that leads into her bedroom.

6) Pertinent parts of the July 2012 PAS (D-2) document:

Dyspnea: Denies, no diag[nosis] and no rx [prescription] medication.

Paralysis: Can only twitch slightly lower extremities, no movement, t7-t11 injury, paralysis from waist down, no diagnosis of this, social worker confirmed paralysis according to last year reviewer per phone to PCP and PAS updated.

Pain: Denies taking rx med for pain, occ[asional] back and ankle pain that she will take a Tylenol for

Contractures: Denies this when explained, no diagnosis

Eating: Food preparation done for member, is able to feed herself and cuts own food, reports only assistance needed is reaching things in the kitchen

Wheeling: Has power chair and manual wheelchair, able to maneuver wheelchair around the home, able to open doors in order to go through

7) Aged/Disabled Waiver Services Policy Manual § 501.5.1.1 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- 0 - 62 hours per month
- Level B - 10 points to 17 points- 63 - 93 hours per month
- Level C - 18 points to 25 points- 94 - 124 hours per month
- Level D - 26 points to 44 points- 125 - 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 15 points as the result of a PAS completed by WVMI in July 2012, in conjunction with her annual medical evaluation. Based on the points received on the PAS, Claimant was evaluated at a Level B care.
- 2) Points for a medical condition cannot be awarded without a physician's diagnosis or prescription medication for the condition. Claimant did not have current diagnoses for dyspnea or contractures, and these conditions were denied. Additional points cannot be awarded for dyspnea and contractures.
- 3) Claimant disclosed experiencing pain to the WVMI nurse during the assessment, for which she took an over-the-counter medication. The WVMI nurse should have followed up on this information as Claimant client admitted to having pain, but had no diagnosis or prescription medication. One (1) additional point will given to Claimant for pain as this area was not fully explored at the time of the assessment and was subsequently verified by Claimant's physician.
- 4) Claimant can feed herself and cut her foods without assistance and was correctly assessed as a level 1 in eating. Assistance in reaching items placed out of Claimant's reach is considered meal preparation, and not considered a deficit in this area.
- 5) Claimant and her representatives denied Claimant required assistance to maneuver her wheelchair in the home. Based on this disclosure to the WVMI nurse, Claimant was correctly assessed as a level 2 in wheeling – wheels independently.
- 6) With the addition of a point for pain, Claimant's points on the July 2012 PAS are sixteen (16). Claimant was correctly assessed at a Level B 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.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 15th day of October 2012

**Kristi Logan
State Hearing Officer**