



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

Rocco S. Fucillo
Cabinet Secretary

September 12, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 28, 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 D to Level C 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 no longer meet the medical criteria to receive services at a Level D care.

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

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Bureau of Senior Services
West Virginia Medical Institute
MountainHeart Community Services

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1761

**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 ----- held on August 28, 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 5, 2012.

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 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:

-----, Medical Attorney-in-Fact

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.

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 June 4, 2012
- D-3 Notice of Decision dated June 19, 2012
- D-4 Pre-Admission Screening dated June 2, 2011

VII. FINDINGS OF FACT:

- 1) Claimant was re-evaluated to determine medical eligibility for the Aged/Disabled Waiver program on June 4, 2012. A Pre-Admission Screening (PAS) form was completed that date by Teresa McCallister, RN with the West Virginia Medical Institute (WVMI) (D-2).

Claimant received 19 points on the June 2012 PAS, which equates to a Level C care (D-3). Twenty-six (26) points are required to receive Level D services.

- 2) The Department conceded that Claimant's PAS should reflect a total of twenty (20) points as Claimant had not been given the correct amount of points for bowel incontinence (D-2).
- 3) Teresa McCallister, RN with WVMI, testified to the findings on the June 2012 PAS, as compared to the findings of the June 2011 PAS. Claimant had been given a point the previous year for angina due to a prescribed medication. Ms. McCallister stated Claimant did not have a diagnosis of angina and the medication she uses, Metoprolol, is not a medication that treats angina specifically. Ms. McCallister stated Claimant no longer used oxygen continuously, only at bedtime, and did not receive a point in that area on this year's PAS (D-2 and D-4).

In the previous assessment, Claimant was assessed as a level 3 - requiring one-person assistance to transfer, a level 3 in vision – impaired/not correctable and a level 3 in communication - impaired/understandable with aids. Ms. McCallister testified Claimant was assessed this year as a level 2 in transferring – supervision/assistive device, a level 2 in vision – impaired/correctable and a level 2 in communication – impaired/understandable (D-2).

Ms. McCallister stated previously, it was reported that Claimant needed physical assistance to transfer due to frequent falling when attempting to sit down. Claimant was observed to transfer during the current assessment without physical assistance.

Ms. McCallister stated Claimant was incorrectly assessed in 2011 as a level 3 in communication, due to her daughter assisting her with remembering. Ms. McCallister clarified that the use of an aid in communication would be the use of sign language or a device that would allow a person to talk (D-4).

Ms. McCallister stated regarding vision, Claimant was able to function in her home with her visual abilities. She observed Claimant walking throughout the home without visual assistance, and she was able to locate the signature line on the release form.

- 4) -----, Claimant's daughter, testified that her mother has difficulty swallowing when eating and cannot finish a meal without choking. ----- encourages Claimant to use her oxygen more often than at bedtime, sometimes insisting that she uses it. ----- stated Claimant shows mental confusion by speaking to inanimate objects, making communication with her difficult. Claimant has no depth perception even when wearing glasses and will stand three (3) feet away from the door when attempting to open it.

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

Transferring: Observed mem[ber] rise from chair by pushing off chair arms, leaning forward, feet scooting, and effort with SOB [shortness of breath] observed; she report[s] problems with returning to chair and falls frequently. Dgtr [daughter] reports mem will not allow contact assistance, and has fallen many times.

Vision: Dgtr reports mem is supposed to wear glasses, and refuses to wear, rendering her unable to determine depths and is not able to negotiate any stairs.

Communication: Mem speaks clearly during visit. She requires assistance for recalling accurate information during assessment.

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

Transferring: Observed mem operate lift chair to rise and return to sitting position. Mem uses Trapeze bar for bed transfer assistance, according to dgtr.

Vision: mem reports she is supposed to wear glasses, dgtr reports mem cannot see stairs or edge of sidewalk without them, and refuses to wear.

Communication: Mem speaks appropriately and clearly during visit; impeded due to forgetfulness at times, requiring reporting of some information by dgtr.

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 20 points as the result of a PAS completed by WVMI in June

2012, in conjunction with her annual medical evaluation. Based on the points received on the PAS, Claimant was evaluated at a Level C care.

- 2) In order to receive a point under Professional/Technical Care Needs, an individual must use continuous oxygen. Testimony and documentation confirms Claimant no longer uses oxygen on a continuous basis and therefore cannot be awarded a point in that area.
- 3) The 2012 PAS documents that Claimant is able to transfer with the use of a lift chair and trapeze bar. The need for physical assistance to transfer was not reported to the assessing nurse, nor was physical assistance observed during the evaluation. Claimant was correctly assessed as a level 2 in transferring, with no additional points awarded.
- 4) Claimant's speech was noted to be clear and understandable and able to function in her home with her visual acuity. Claimant was correctly assessed as level 2 in vision and communication and no additional points can be awarded in these areas.
- 5) Claimant no longer meets the medical criteria to continue receiving services at Level D 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 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 12th day of September 2012

Kristi Logan
State Hearing Officer