



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736

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 September 11, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker service hours under the Medicaid 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 and Disabled Waiver Services program is based on current policy and regulations. These regulations provide that the number of homemaker service hours are 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 are reviewed and approved by West Virginia Medical Institute (WVMI) (Aged/Disabled Home and Community Based Waiver Policy and Procedures Manual 501.5.1).

The information which was submitted at your hearing revealed that while you remain medically eligible for participation in the Aged and Disabled Waiver program, your LOC should be reduced from a level "C" to a level "B".

It is the decision of the State Hearing Officer to uphold the proposal of the Department to reduce your homemaker service hours under the Medicaid Aged/Disabled (HCB) Title XIX Waiver Services program.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Kay Ikerd, Bureau of Senior Services
PPL

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1805

**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 Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This hearing convened on September 11, 2012, on a timely appeal, filed July 23, 2012.

It should be noted here that the Claimant's benefits under the Aged and Disabled Waiver program continue at the previous level of determination pending a decision from the State Hearing Officer.

II. PROGRAM PURPOSE:

The Aged and Disabled Waiver program, hereinafter ADW, 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's Attorney-In-Fact
Cecilia Brown, Quality Assurance Manager, Bureau of Senior Services (BoSS)
Debra Lemasters, RN, West Virginia Medical Institute (WVMI)

Presiding at the hearing was Eric L. Phillips, 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 was correct in its proposal to reduce the Claimant's homemaker service hours provided through the Medicaid Aged and Disabled Waiver program.

V. APPLICABLE POLICY:

Aged and Disabled Home and Community Based Waiver Policy Manual Chapter 501.5.1.1(a) and 501.5.1.1 (b)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged and Disabled Home and Community Based Waiver Policy Manual Chapter 501.5.1.1(a) and 501.5.1.1 (b)
- D-2 Pre-Admission Screening dated May 15, 2012
- D-3 Notice of Decision dated June 1, 2012
- D-4 Pre-Admission Screening dated March 14, 2011
- D-5 Letter from -----, M.D. dated May 21, 2012

VII. FINDINGS OF FACT:

- 1) On May 15, 2012, the Claimant was medically assessed to determine his continued eligibility and to assign an appropriate Level of Care (LOC) for participation with the Aged and Disabled Waiver Services (ADW) program. Prior to the re-evaluation, the Claimant was assessed at a Level "C" LOC (Exhibit D-4) (18 points) under the program guidelines.
- 2) Debra Lemasters, WVMI assessing nurse, completed the Pre-Admission Screening (PAS) assessment (Exhibit D-2), as part of her medical assessment of the Claimant. Ms. Lemasters testified that the Claimant was awarded a total of 16 points which resulted in a Level "B" LOC determination.
- 3) On June 1, 2012, the Claimant was issued a Notice of Decision (Exhibit D-3), which documents the approval of his medical eligibility for the ADW program and the reduction of his homemaker service hours which cannot exceed 93 monthly hours.
- 4) -----, the Claimant's Attorney-In-Fact, testified that additional points should have been attributed to the Claimant's PAS in the areas of a diagnosis of arthritis, hearing, wheeling, grooming, bathing, and dressing.

The following addresses the contested areas:

Diagnosis of arthritis----- indicated that her uncle suffers from arthritis and has been prescribed hydrocodone as a treatment for the diagnosis. Ms. Lemasters purported that the Claimant's hydrocodone prescription did not specify whether or not it was written for arthritis and she attempted to verify the diagnosis with the Claimant's physician (Exhibit D-2). -----, M.D. provided additional information (Exhibit D-5) to Ms. Lemasters on May 25, 2012, however, the documentation did not specify a diagnosis of arthritis and no points were attributed to the LOC.

Hearing----- indicated that the Claimant experiences difficulty hearing and she needs to scream in his ear for him to understand her. Additional testimony indicated that the Claimant must increase his television volume to maximum levels in order to hear. Ms. Lemasters noted in the PAS that she "has to speak louder at times to be heard." Ms. Lemasters indicated that she could not award points in the contested area because the Claimant could communicate when spoken to in a louder voice.

Wheeling----- testified that without the aid of wheelchair, her uncle could not ambulate outside of the home. ----- testified that while inside the home, her uncle requires physical assistance due to shortness of breath and his oxygen intake must be increased. Ms. Lemasters testified that during the assessment she was informed that the Claimant utilized a wheelchair outside of the home and she could not award points because the assessment is based on an individual's abilities inside the home.

Bathing----- testified that her uncle requires total care with bathing, but did acknowledge that he could provide minimal participation by wiping his face. Ms. Lemasters documented in the PAS that "[Homemaker] stated she does all the washing for his bath but stated that member does wash his face and hands himself. Noted member able to reach upper body to wash himself but is unable to reach low legs, feet or backside of body to wash himself." Ms. Lemasters indicated that she assessed the Claimant as a Level 2, requiring physical assistance, because the Claimant could participate in the functional activity.

Grooming----- indicated that the Claimant requires total care in the contested area. Ms. Lemasters documented in the PAS that the Claimant was able to participate with his mouth care because he was able to rinse his mouth out, but noted that the Claimant has no false or permanent teeth. Ms. Lemasters testified that because the Claimant participated in his mouth care, he was assessed as a Level 2, requiring physical assistance.

Dressing----- stated that the Claimant requires total care in the contested area due to shaking in his hands and his inability to stand. Ms. Lemasters documented in the PAS "[Homemaker] stated she holds shirt in front of member and he places arms through sleeves of shirt and than [sic] she places shirt over his head. Due to shaking of arms and hands impaired control of arm and hand movements and needs assist to due [sic] this." Ms. Lemasters testified that due to the Claimant's ability to participate in the contested area, he was assessed as a Level 2 requiring physical assistance.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.5.1.1(a) and (b) documents there are 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 - 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 range of hours per month

Level B - 10 points to 17 points-63-93 range of hours per month

Level C - 18 points to 25 points-94-124 range of hours per month

Level D - 26 points to 44 points- 125-155 range of hours per month

- 6) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.5.1.3 F documents:

Nurses shall not render medical diagnoses. In those cases where there is a medical diagnosis question, the decision shall be based on medical evidence presented by appropriate medical professionals.

VIII. CONCLUSIONS OF LAW:

- 1) Medicaid policy stipulates that an individual's LOC is determined by the number of points awarded on the PAS assessment tool.

- 2) On May 15, 2012, the Claimant was awarded a total of 16 LOC points as part of his PAS assessment, which resulted in a Level “B” LOC determination.
- 3) The matter before the Board of Review is whether or not the WVMI nurse correctly assessed the Claimant based on information relayed during the assessment.
- 4) While the Claimant indicated that he suffered from arthritis during the assessment, there was no medical evidence presented to determine a medical diagnosis. Because the assessing nurse cannot render a medical diagnosis, an additional point in the contested area cannot be awarded.
- 5) During the assessment, the Claimant was able to communicate when spoken to in a louder voice. Because the Claimant’s hearing was correctable, an additional point in the contested area cannot be awarded.
- 6) During the assessment, the Claimant indicated his need for wheeling assistance outside of the home. Because the assessment is based on the individual’s functional abilities inside the home, the Claimant’s use of a wheelchair outside the home cannot be considered. Therefore, an additional point in the contested area cannot be awarded.
- 7) During the assessment, the Claimant reported an ability to participate in bathing by washing his face. Because the Claimant does not require total care with bathing, he was assessed correctly as requiring physical assistance and additional points in the contested area cannot be awarded.
- 8) During the assessment, the Claimant reported minimal participation in dressing by placing his arms through his shirt sleeves. Because the Claimant does not require total care with dressing, he was assessed correctly as requiring physical assistance and additional points in the contested area cannot be awarded.
- 9) During the assessment, the Claimant reported an ability to participate in grooming by completing his own oral care. Because the Claimant does not require total care assistance in the contested area, he was correctly assessed as requiring physical assistance and an additional point in the contested area cannot be awarded.
- 10) As a result of evidence presented during the hearing process, no additional points may be attributed to the Claimant’s PAS. The Claimant’s total points are 16. In accordance with existing policy, an individual with 16 points qualifies as a Level B LOC determination and is therefore eligible to receive a maximum of 93 homemaker service hours.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the Department’s proposal to reduce the Claimant’s homemaker service hours under the Aged/Disabled, Title XIX (HCB) Waiver Services program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ day of September 2012.

Eric L. Phillips
State Hearing Officer