



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

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 6, 2012. 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 501.5.1.1)

While 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, your documented medical conditions confirm that your Level of Care should be a Level "B" rating. As a result, you are eligible to receive up to 93 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

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1815

**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 on September 6, 2012, on a timely appeal submitted to the Department on July 19, 2012.

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

II. PROGRAM PURPOSE:

The 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:

-----, Claimant
-----, Homemaker/RN, -----
-----, Case Manager, -----
-----, Claimant's sister-in-law/Homemaker, -----
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 Section 501.5.1.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 501.5.1.1(a) and 501.5.1.1(b)
- D-2 Pre-Admission Screening (PAS) assessment completed on June 25, 2012
- D-3 Notice of Decision dated July 6, 2012
- D-4 Pre-Admission Screening (PAS) assessment completed on August 2, 2011

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 and assign an appropriate Level of Care.
- 2) West Virginia Medical Institute (WVMI) Registered Nurse Barbara Plum completed a Pre-Admission Screening (PAS) medical assessment (D-2) on June 25, 2012, and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 15 points for documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care "B" - eligible for up to 93 hours per month of homemaker services. It should be noted that the Claimant previously qualified for a Level of Care "C" - eligible for up to 124 hours per month of homemaker services - as a result of a PAS completed on August 2, 2011 (D-4).
- 3) The Department sent the Claimant a Notice of Decision on July 6, 2012 (D-3), advising her of the proposed reduction in homemaker service hours.
- 4) -----, Homemaker/Registered Nurse with -----, contended that the Claimant should have been awarded one (1) additional point for mental disorder (depression) as she is now taking a

prescription medication for the condition. The WVM Nurse testified that the Claimant denied having depression or anxiety on the date of the assessment, and there was no diagnosis or drug prescribed for the condition at that time.

----- testified that the Claimant is oriented most of the time, but experiences bouts of forgetfulness concerning the date/time and must be reminded. The WVM Nurse stated that the Claimant was oriented to person, place and time on the date of the assessment, and denied experiencing disorientation. Therefore, she was rated as Level 1- oriented.

----- stated that the Claimant has a severe hearing impairment in her left ear due to a previous injury, and the hearing loss cannot be corrected with surgery. The WVM Nurse testified that the Claimant was rated as having impaired/correctable hearing (Level 2) on the PAS because she responded to questions appropriately on the date of the assessment. Kay Ikerd, Registered Nurse with the Bureau of Senior Services, contended that no testimony was provided to indicate the Claimant has difficulty hearing in her right ear, and stated that the PAS only considers the Claimant's ability to function in her home.

Ms. Ikerd indicated that the Claimant's Homemaker RN could submit a request for a Level of Care increase if she believes the Claimant's condition has worsened since the date of the PAS.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Sections 501.5.1.1(a) and 501.5.1.1(b) (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- 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.
- 2) The Claimant was awarded 15 points as the result of a PAS completed by WVMi in June 2012 in conjunction with her annual medical evaluation. No additional points are awarded to the Claimant as a result of testimony presented during the hearing. The Claimant denied having depression or anxiety on the date of the assessment, and no diagnostic information was provided to the Department at that time. The Claimant was oriented on the date of the assessment, and the WVMi Nurse testified that she was able to respond to questions appropriately on that date. Therefore, no additional points can be awarded for intermittent disorientation or uncorrectable hearing.
- 3) The Claimant's total number of points remains at 15, rendering her eligible to receive a Level "B" 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 12th Day of September, 2012.

**Pamela L. Hinzman
State Hearing Officer**