



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

October 4, 2012

Dear Ms. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held October 3, 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 WVM. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual 501.5.1.1)

Information submitted at the hearing reveals that your documented medical conditions confirm your Level of Care should be a Level "D" rating. As a result, you are eligible to receive 125-155 hours per month of homemaker services.

It is the decision of the State Hearing Officer to **reverse** 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
WVM
CCIL

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

IN RE: ----,

Claimant,

v.

ACTION NO.: 12-BOR-1824

**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 via videoconference on October 3, 2012, on a timely appeal submitted to the Department on July 11, 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

---- ----, Claimant's mother

----, Case Manager, Coordinating Council for Independent Living

----, RN, West Virginia Choice

Kay Ikerd, RN, Bureau of Senior Services

Melissa Bell, 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 June 29, 2012
- D-4 Pre-Admission Screening (PAS) assessment completed on June 14, 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 Melissa Bell 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 25 points for documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care "C" - eligible for 94-124 hours per month of homemaker services. It should be noted that the Claimant previously qualified for a Level of Care "D" - eligible for 125-155 hours per month of homemaker services.
- 3) On June 29, 2012, the Department sent the Claimant a Notice of Decision (D-3), advising her of the proposed reduction in homemaker service hours.
- 4) The Claimant's witnesses contended that the Claimant - who is 27 years old and has been diagnosed with Rett Syndrome (a neurodevelopmental disorder) - should have been awarded one

(1) additional point on the PAS for total disorientation (Level 3). The Claimant's witnesses stated that the Claimant is unaware of anything, including person, date and time, but will look at individuals and smile randomly. The Claimant's mother, ----, testified that her daughter knows her just as a newborn child knows its mother, but she is not oriented to situation and time. ----, Case Manager with Coordinating Council for Independent Living, testified that the Claimant does not know who she (Ms. ----) is.

The WVMi Nurse testified that she rated the Claimant as intermittently disoriented (Level 2) because she made eye contact with her mother during the assessment and responded to her mother's gestures with a wider smile. PAS notes indicate that the Claimant's mother reported on the date of the assessment that the Claimant is not oriented to situation and time.

It should be noted that the Claimant had been rated as totally disoriented on the 2011 PAS – completed by former WVMi Nurse Carrie Naughton - as she was oriented to person only, but was disoriented to place, time, social security number, date of birth and address.

Nurse Bell attempted to obtain diagnoses information from the Claimant's physician concerning contractures, aphasia, dysphagia and paralysis, as the Claimant appeared to have frozen joints in her toes, is unable to speak, and has difficulty swallowing. PAS notes indicate that the Claimant is unable to move her extremities with purposeful movements. However, the diagnoses could not be confirmed.

- 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 25 points as the result of a PAS completed by WVMi in June 2012 in conjunction with her annual medical evaluation.
- 3) As a result of information presented during the hearing, one (1) additional point is awarded for total disorientation (Level 3). Testimony reveals that while the Claimant may respond instinctively to her mother, she is unaware of basic information and could not identify the date, time or the identity of other individuals.
- 4) The Claimant's total number of points is elevated to 26, rendering her eligible to receive a Level "D" Level of Care.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** 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 4th Day of October 2012.

Pamela L. Hinzman
State Hearing Officer