



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

October 31, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held October 24, 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 "D" to a level "C".

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
HCCOA

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-2124

**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, convened on October 24, 2012, for -----. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing convened on a timely appeal, filed August 24, 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
-----, Claimant's Attorney-In-Fact
-----, Case Manager----- County Committee on Aging
Pam Pushkin, Quality Assurance-Bureau of Senior Services
Lee Ann Beihl, 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 Notice of Decision dated August 20, 2012
- D-3 Pre-Admission Screening dated August 8, 2012
- D-4 Pre-Admission Screening dated August 10, 2011

VII. FINDINGS OF FACT:

- 1) On August 8, 2012, the Claimant was medically assessed to determine her 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 "D" LOC (Exhibit D-4) (29 points) under the program guidelines.
- 2) Lee Ann Beihl, WVMi assessing nurse, completed the Pre-Admission Screening (PAS) (Exhibit D-3), as part of her medical evaluation of the Claimant. Ms. Beihl testified that the Claimant was awarded a total of 22 points which resulted in a Level "C" LOC determination.
- 3) On August 20, 2012, the Claimant was issued a Notice of Decision (Exhibit D-4), which documents the approval of her medical eligibility for the ADW program and the reduction of her homemaker service hours which cannot exceed 124 monthly hours.
- 4) The Claimant's Attorney-In-Fact contended that additional points should have been awarded in the areas of dressing, bathing, and walking.

The following addresses the contested areas:

Bathing-The Claimant was assessed as Level 2, requiring physical assistance, and awarded one point toward her LOC. Ms. Beihl documented in the PAS “[Claimant] requires assistance on/off shower chair; she is able to wash her face to her knees; needs assistance with back; feet; legs; drying due to shortness of breath.” The Claimant’s Attorney-In-Fact testified that the Claimant requires assistance with drying after bathing.

Dressing-The Claimant was assessed as Level 2, requiring physical assistance, and awarded one point toward her LOC. Ms. Beihl documented in the PAS “[Claimant] demonstrated ability to raise LUE [left upper extremity] over head; unable to raise RUE [right upper extremity] past chest due to right shoulder fx. Demonstrated inability to cross legs over opposite knees; needs assistance with upper and lower body clothing; shoes/socks; unable to button or zip.” Ms. Beihl purported that the Claimant’s ability to raise her arm indicated an ability to participate with dressing. ----- testified that the Claimant requires total care in the area of dressing.

Walking-The Claimant was assessed as Level 2, supervised assistive device, and awarded one point toward her LOC. Ms. Beihl documented in the PAS “[Claimant] demonstrated walking with quad-cane; poor balance; unsteady gait; has walker available.” Ms. Beihl indicated that she observed the Claimant ambulate without assistance and assessed her accordingly. ----- testified that the Claimant occasionally requires assistance when ambulating inside the home.

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

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 August 8, 2012, the Claimant was awarded a total of 22 LOC points as part of her PAS assessment, which resulted in a Level "C" 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) The evidence does not support that an additional point should be attributed to the Claimant's LOC in the area of bathing. During the assessment, the Claimant reported an ability to participate in her bathing by washing her body from the face to the knees. Because the Claimant possess the ability to participate in a portion of the life area, the assessing nurse correctly assessed the Claimant as requiring physical assistance and an additional point cannot be awarded.
- 5) The evidence does support that an additional point can be attributed to the Claimant's LOC in the area of dressing. During the assessment, the Claimant reported an inability to button or zip clothing and reported requiring assistance with clothing, shoes and socks. The Claimant did not indicate that she could participate in the life area of dressing and testimony is considered credible that the Claimant requires total care with dressing. Therefore, an additional point can be attributed in the contested area.
- 6) The evidence does not support that an additional point should be attributed to the Claimant's LOC in the area of walking. The Claimant demonstrated walking with an assistive device and did not require one-person physical assistance to ambulate during the assessment; therefore, the assessing nurse correctly assessed the Claimant as requiring a supervised/assistive device and an additional point in the contested area cannot be awarded.
- 7) As a result of evidence presented during the hearing process, one additional point may be attributed to the Claimant's LOC. The Claimant's total points are 23. In accordance with

existing policy, an individual with 23 points qualifies as a Level C determination and is therefore eligible to receive a maximum of 124 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 October 2012.

Eric L. Phillips
State Hearing Officer