



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General

Earl Ray Tomblin
Governor

Board of Review
P.O. Box 1736
Romney, WV 26757

Rocco S. Fucillo
Cabinet Secretary

November 13, 2012

Dear Ms. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held October 31, 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-RN, BoSS
---- Services ----- County

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

IN RE: ----,

Claimant,

v.

ACTION NO.: 12-BOR-2251

**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 ---- convened on October 31, 2012. 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 was convened on a timely appeal, filed September 19, 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 witness

----, Claimant's witness

Kay Ikerd, RN, Bureau of Senior Services (BoSS)

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 Pre-Admission Screening dated August 28, 2012
- D-3 Notice of Decision dated September 5, 2012
- D-4 Pre-Admission Screening dated September 1, 2011

Claimant's Exhibits:

- C-1a Information from ---- System dated September 14, 2012
- C-1b Information from The Center of ---- dated October 15, 2012

VII. FINDINGS OF FACT:

- 1) On August 28, 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 "C" LOC (Exhibit D-4) (19 points) under the program guidelines.
- 2) Lee Ann Beihl, WVMH assessing nurse, completed the Pre-Admission Screening (PAS) (Exhibit D-2), as part of her medical evaluation of the Claimant. Ms. Beihl testified that the Claimant was awarded a total of 15 points, which resulted in a Level "B" LOC determination.
- 3) On September 5, 2012, the Claimant was issued a Notice of Decision (Exhibit D-3), which documents the approval of her medical eligibility for the ADW program and the reduction of her homemaker service hours which cannot exceed 93 monthly hours.

- 4) The Claimant contended that additional points should have been awarded for transferring, walking and a diagnosis of pain.

The following addresses the contested areas:

Transferring-Ms. Beihl assessed the Claimant as Level 2, supervised/assistive device, and documented in the PAS, “[Claimant] demonstrated transfer with heavy furniture/cane assist, poor balance, severe dyspnea noted.” The Claimant indicated that on the day of the assessment, she transferred with the assistance of her furniture, but was short of breath. The Claimant purported that she requires assistance when transferring and provided documentation from her medical providers (Exhibit C-1a, C-1b). It shall be noted that information from the Claimant’s medical providers confirms her testimony concerning one-person assistance for walking and transferring; however, these exhibits are dated for September and October, after the completed PAS assessment of August 28, 2012, and were not available to the assessing nurse in the determination of the Claimant’s functional abilities.

Walking-Ms. Beihl assessed the Claimant as Level 2, supervised/assistive device, and documented in the PAS, “[Claimant] demonstrated walking with heavy furniture, wall, cane assist; poor balance; unsteady gait; hx [history] falls’ severe dyspnea noted.” The Claimant indicated that she ambulated on the day of the assessment with furniture assistance and experienced shortness of breath. The Claimant purported that she has a history of falls, due to her seizures. ----, the Claimant’s Homemaker Aide, testified that the Claimant requires physical assistance or the aid of walker to assist with her ambulation.

Pain-The Claimant indicated that she experiences severe pain. Ms. Beihl awarded a point toward the Claimant’s LOC for pain based on her report of pain, her prescribed medications, and the diagnosis of the PAS referral.

- 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 28, 2012, the Claimant was awarded a total of 15 LOC points as part of her 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) Policy requires that one point may be attributed for each medical condition or symptom on the PAS. Testimony revealed that the Claimant received one point toward her LOC for a diagnosis of pain; therefore, the Claimant received maximum LOC points for the contested area and additional points cannot be awarded.
- 5) Evidence presented during the hearing does not support that an additional point can be attributed to the Claimant's LOC for transferring. During the assessment, the Claimant demonstrated difficulties while transferring with assistive devices, but did not require physical assistance.
- 6) Evidence presented during the hearing does not support that an additional point can be attributed to the Claimant's LOC for walking. During the assessment, the Claimant demonstrated difficulties while ambulating with assistive devices, but did not require physical assistance.
- 7) The Claimant did not provide sufficient evidence to support her position that additional points should have been awarded on the August 28, 2012, PAS. The Claimant's total points are 15.

In accordance with existing policy, an individual with 15 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 November 2012.

Eric L. Phillips
State Hearing Officer