



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

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

January 6, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held January 5, 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 and benefit levels 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)

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 and your documented medical conditions confirm that your Level of Care should be a Level "B" rating. As a result, you are eligible to receive three (3) hours per day or 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
Public Partnership, LLC

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

IN RE: -----,

Claimant,

v.

Action Number: 11-BOR-2323

**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 telephonically on January 5, 2012 on a timely appeal filed October 26, 2011 and received by the Hearing Officer on November 14, 2011.

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's Granddaughter/Attorney-in-Fact
-----, Claimant's Daughter/Homemaker, Public Partnership, LLC
Kay Ikerd, RN, Bureau of Senior Services
-----, 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 Section 501.5.1.1(a) and 501.5.1.1(b)
- D-2 Pre-Admission Screening (PAS) assessment completed on October 3, 2011
- D-3 Notice of Decision dated October 7, 2011
- D-4 Pre-Admission Screening (PAS) assessment completed on October 27, 2010

Claimant's Exhibits:

- C-1 Claimant's medication list
- C-2 Osteoarthritis diagnosis verification from [REDACTED] M.D., dated November 23, 2011
- C-3 Nitroglycerin prescription dated November 23, 2011
- C-4 Lortab prescription dated November 23, 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 ----- completed a Pre-Admission Screening (PAS) medical assessment (D-2) on October 3, 2011 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 16 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care "B" - eligible for three (3) hours per day or 93 hours per month of homemaker services. It should be noted that the Claimant previously qualified for a Level of Care "C" - eligible for four (4) hours per day or 124 hours per month of homemaker services - as a result of a PAS completed on October 27, 2010 (D-4). However, the Claimant's granddaughter, --- -----, indicated that the Claimant's Level of Care was later elevated to a Level "D."

- 3) The Claimant was sent notification on October 7, 2011 (D-3) advising her of the proposed reduction in homemaker service hours.
- 4) During the hearing, the Claimant's representatives contended that additional points should be awarded for angina at rest, angina at exertion and significant arthritis. It should be noted that the Claimant had been awarded points for angina at exertion and significant arthritis on the 2010 PAS.

The WVM Nurse testified that the Claimant has a diagnosis of coronary artery disease, but denied experiencing chest pain when questioned during the October 2011 PAS. She and her daughter, [REDACTED], denied that the Claimant used nitroglycerin. The Claimant's granddaughter testified that the Claimant experiences angina both at rest and at exertion, but may not have had nitroglycerin at the time of the assessment. She provided Exhibit C-3, a prescription for nitroglycerin dated November 23, 2011.

The Claimant's witnesses contended that she has had arthritis for several years. Notes on the 2011 PAS indicate that the Claimant reported having arthritis in her bilateral knees and has had a knee replacement. The Claimant provided Exhibit C-2, verification of the osteoarthritis diagnosis from [REDACTED] M.D., dated November 23, 2011.

The WVM Nurse testified that she had attempted to obtain information from the Claimant's physician concerning potential diagnoses for angina and significant arthritis following the PAS, but received no response from the doctor.

Kay Ikerd, Registered Nurse with the Bureau of Senior Services (BoSS), indicated that the Claimant can request an increase in homemaker service hours if her condition has changed since the date of the PAS or if she wishes to provide additional information concerning her diagnoses.

- 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- 2 hours per day or 62 hours per month

Level B- 10 points to 17 points- 3 hours per day or 93 hours per month

Level C- 18 points to 25 points- 4 hours per day or 124 hours per month

Level D- 26 points to 44 points- 5 hours per day or 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 16 points as the result of a PAS completed by WVMI in October 2011 in conjunction with her annual medical evaluation.
- 3) As a result of information presented during the hearing, one (1) additional point is awarded for significant arthritis. The Claimant reported having arthritis during the PAS and this information is consistent with diagnosis verification provided by the Claimant's physician. No points, however, can be awarded for angina at rest or at exertion. While the Claimant provided a prescription for nitroglycerin during the hearing, information documented on the PAS indicates that the Claimant denied experiencing chest pain, and both she and her daughter denied that the Claimant used nitroglycerin.
- 4) The addition of one (1) point brings the Claimant's total number of points to 17 and renders 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 6th Day of January, 2012.

**Pamela L. Hinzman
State Hearing Officer**