



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

February 3, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held February 2, 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 "C" rating. As a result, you are eligible to receive four (4) hours per day or 124 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
Central West Virginia Aging Services

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

IN RE: -----,

Claimant,

v.

Action Number: 11-BOR-2564

**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 February 2, 2012 on a timely appeal filed November 23, 2011 and received by the Hearing Officer on December 19, 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
-----, Claimant's Daughter/Homemaker, Panhandle Support Services
-----, Case Manager, Central West Virginia Aging Services
Brian Holstine, Licensed Social Worker, Bureau of Senior Services
Kathy Gue, 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 November 14, 2011
- D-3 Notice of Decision dated November 16, 2011
- D-4 Pre-Admission Screening (PAS) assessment completed on January 6, 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 Kathy Gue completed a Pre-Admission Screening (PAS) medical assessment (D-2) on November 14, 2011 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 23 points for documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care "C" - eligible for four (4) hours per day or 124 hours per month of homemaker services. It should be noted that the Claimant previously qualified for a Level of Care "D" - eligible for five (5) hours per day or 155 hours per month of homemaker services - as a result of a PAS completed on January 6, 2011 (D-4).
- 3) The Claimant was sent notification on November 16, 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 in the following areas:

Total care with bathing- -----, the Claimant's Daughter/Homemaker, testified that her mother was assisting in washing her own "private" areas at the time of the assessment, however, she no longer participates in bathing because she was not getting herself clean.

The WVMi Nurse testified that she was informed the Claimant washed her "private areas" on the date of the assessment, therefore, she was rated as requiring physical assistance with bathing on the PAS.

One-person assistance with transferring and walking- ----- testified that her mother always requires one-person physical assistance with transferring and walking in the home due to weakness and shortness of breath. ----- indicated that she had been called away from the home for an emergency on the date of the PAS and was not present for the first portion of the assessment. She indicated that her mother had to answer the door for the WVMi Nurse on that date, but had difficulty.

The WVMi Nurse testified that she observed the Claimant sit on her bed and push herself up using the bed on the date of the assessment. She also observed the Claimant walk with a cane, but noted the Claimant had a very unsteady gait and became short of breath. Therefore, the Claimant was rated as requiring supervision/assistive device to transfer and walk. PAS notes indicate that the Claimant's daughter was present at some point during the assessment, and that the completed PAS was reviewed with the Claimant and her daughter. PAS notes state that the Claimant and her daughter were both in agreement with the accuracy of the information recorded.

- 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 23 points as the result of a PAS completed by WVMi in November 2011 in conjunction with her annual medical evaluation.
- 3) As a result of information presented during the hearing, no additional points are awarded to the Claimant. The Claimant indicated that she was able to participate in her own bathing to a limited degree at the time of the PAS. The WVMi Nurse observed the Claimant transfer using the bed and walk with the assistance of a cane. While the Claimant's daughter indicated her mother had only transferred/walked without physical assistance because she had been called away from the home for an emergency, PAS notes state that the completed assessment was reviewed with the Claimant and her daughter and they agreed with the accuracy of the information collected.
- 4) The Claimant's total number of points remains at 23 and renders her eligible to receive a Level "C" 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 3rd Day of February, 2012.

**Pamela L. Hinzman
State Hearing Officer**