



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

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

March 2, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held February 28, 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 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 Level of Care should be reduced from a level "C" to a level "B" Level of Care.

It is the decision of the State Hearing Officer to Uphold the action 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, Bureau of Senior Services
Americare Management Services

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-368

**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 on a timely appeal, filed December 23, 2011.

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
-----, RN, Mountain State Home Health
-----, Homemaker Aide-Mountain State Home Health
Kay Ikerd, RN-Bureau of Senior Services (BoSS)
-----, RN-West Virginia Medical Institute

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 Assessment dated December 5, 2011
- D-3 Pre-Admission Screening Assessment dated December 1, 2010
- D-4 Notice of Decision dated December 13, 2011

VII. FINDINGS OF FACT:

- 1) On December 5, 2011, the Claimant was medically assessed to determine her continued eligibility and to assign an appropriate Level of Care, hereinafter LOC, in participation with the Aged and Disabled Waiver program. Prior to the re-evaluation, the Claimant was assessed at a Level "C" LOC under the program guidelines.
- 2) On December 13, 2011, the Claimant was issued a Notice of Decision, Exhibit D-4. This exhibit noted that the Claimant had been determined medically eligible to continue to receive in-home services under the program guidelines, but her corresponding level of care could not exceed 93 hours per month (LOC "B" determination).
- 3) Ms. -----, West Virginia Medical Institute (WVMI) assessing nurse completed Exhibit D-2, the Pre-Admission Screening assessment, hereinafter PAS, as part of her medical assessment of the Claimant. ----- testified that the Claimant was awarded a total of 13 points during the evaluation, which qualifies for a Level "B" LOC. Additionally, during the hearing process ----- compared her findings to the Claimant's previous PAS assessment of December, 2010.

- 4) As a matter of record, there was a discrepancy in PAS assessment (Exhibit D-2) as to whether or not a point was awarded for the Claimant's prognosis. The assessment documents the Claimant's prognosis as stable; however, the assessing nurse's narrative documentation lists the prognosis as, "terminal dx listed by M.D.; She states her health and functional abilities are about the same as this time last year." Information concerning the physician's statement failed to document any findings concerning the Claimant's prognosis and neither the Claimant nor her representative contested any information concerning such area of the assessment. The addition of a point in the area of prognosis would have no affect on the Claimant's Level of Care, because the Claimant and her representative contend that additional points should have only been awarded in the area of bowel and bladder incontinence. Therefore, this discrepancy is considered moot and no ruling is necessary.
- 5) The Claimant and her representative contend that additional points should have been awarded in the area of bowel and bladder incontinence. Testimony indicated that the Claimant has stress incontinence of her bladder and experiences daily accidents when she coughs or sneezes. Testimony indicated that the Claimant utilizes protective under garments and experiences occasional bowel accidents due to diarrhea. Ms. Kay Ikerd testified that no points are awarded when the individual's incontinence is assessed at a Level 1 or continent. ----- indicated that during the assessment, the frequency of incontinence was discussed with the Claimant and her husband. They reported that the Claimant experiences incontinence one time per month and her incontinence was due to mobility issues. ----- testified that incontinence episodes related to mobility require the individual to be assessed as continent, because the issues do not relate to incontinence. ----- documented her findings of the Claimant's bowel and bladder incontinence in the assessment as, "[Claimant] wears pull ups and when discussing this she states she wets on herself sometimes. Continued talking about accidents to determine frequency as I told her sometimes means different things to different people. Husband was in the room during this time and she looked to him to help answer and he states it only occurs when she can't get up and states not very often. Between the two of them they report it may occur once a month. I asked again if accidents occurred because of lack of ability to control bladder or because of mobility difficulty and they both stated it was because of difficulty with getting up and mobility. Discussed bowel incontinence and she tells me that she has had once [sic] accident with her bowels because of mobility difficulty as well. Explained to member that indicator would be marked continent as she reports that she is not incontinent or lack bladder or bowel control but that accidents are a result because of a mobility problem and per criteria I have to mark her as continent. She verbalized agreement and understanding."

The matter before the Board of Review is whether or not the assessing nurse correctly assessed the Claimant based on information related during the assessment. Policy requires that a point is awarded in the contested area when the individual is assessed as incontinent, meaning they experience three or more episodes of incontinence on a weekly basis. Information related during the assessment revealed that the Claimant experienced an episode of bowel and bladder incontinence at least once a month, which was a result of mobility issues. Therefore, the assessing nurse correctly assessed the Claimant as continent and an additional deficit in the contested area cannot be awarded.

- 6) 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 Level of Care (LOC) is determined by the number of points awarded on the Pre-Admission Screening (PAS) assessment tool.
- 2) On December 5, 2011, the Claimant was assessed a total of 13 points as part of her PAS assessment completed by West Virginia Medical Institute.
- 3) As a result of evidence and testimony presented during the hearing process, no additional points may be awarded. The Claimant's total points remain at 13.

- 4) In accordance with existing policy, an individual with 13 points qualifies as a Level “B” LOC and is therefore eligible to receive a maximum of 93 monthly hours of homemaker services.

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 _____ day of March, 2012.

Eric L. Phillips
State Hearing Officer