



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

April 25, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held April 19, 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 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 WVM. (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
WVM
Public Partnership, LLC

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

IN RE: ---- ----,

Claimant,

v.

ACTION NO.: 12-BOR-702

**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 April 19, 2012 on a timely appeal submitted to the Department on July 26, 2011 and received by the Board of Review on February 23, 2012.

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 wife
Kay Ikerd, RN, Bureau of Senior Services
Brenda Myers, 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 Sections 501.5.1.1(a) and 501.5.1.1(b)
- D-2 Pre-Admission Screening (PAS) assessment completed on July 13, 2011
- D-3 Pre-Admission Screening (PAS) assessment completed on September 2, 2010
- D-4 Notice of Decision dated July 21, 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 Brenda Myers completed a Pre-Admission Screening (PAS) medical assessment (D-2) on July 13, 2011 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 24 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 September 2, 2010 (D-3).
- 3) The Claimant was sent notification on July 21, 2011 (D-4) advising him of the proposed reduction in homemaker service hours.
- 4) As a matter of record, the WVMI Nurse reviewed the PAS assessment during the hearing and indicated that the Claimant should have received one (1) additional point for pain under Section 23 of the PAS (Medical Conditions/Symptoms). The nurse stated that the point had been assigned for significant arthritis (instead of pain) as the result of a recording error. Kay Ikerd, Registered Nurse with the Bureau of Senior Services, testified that the Department does not normally rescind

a point that has been awarded erroneously. Therefore, the Claimant's total number of points was elevated to 25 during the hearing.

- 5) The Claimant's wife, ----, testified that she does not believe the WVMi Nurse erred in her assessment, however, she feels there may have been a difference in interpretation. ---- contended that additional points should be awarded for total care with dressing and grooming, and one-person assistance with wheeling in the home.

The Claimant's wife testified that she dresses the Claimant from "head to toe," and he only physically puts his arm in his sleeve. She stated that she places her hand over the Claimant's hand when he brushes his hair. She also indicated that the Claimant was using an electric toothbrush at the time of the assessment, but no longer uses the device. The Claimant's wife purported that he uses a wheelchair in the home at times and requires one-person assistance to maneuver the chair.

The WVMi Nurse explained that the Claimant was not rated as requiring total care in dressing, as he reported the ability to put his left arm through his shirt sleeve and could assist in pulling up his pants. The nurse testified that the Claimant was not rated as requiring total care in grooming, as he helps brush his hair and could brush his teeth with an electric toothbrush at the time of the assessment. The nurse indicated that the Claimant reported having a manual wheelchair, but said the chair was not used in the home.

It should be noted that the Claimant was rated as requiring total care in dressing and grooming on the PAS completed in 2010, however, information provided to the WVMi Nurse during the 2011 PAS indicates that the Claimant participates in these activities to a limited extent. The Claimant was awarded a deficit for hearing (impaired, not correctable) on the 2010 PAS, however, the nurse indicated that he exhibits functional hearing in the home. PAS notes indicate that the Claimant's wife reported he is deaf in his left ear, but can hear well in his right ear. The Claimant's wife indicated that if an individual is speaking to the Claimant on his left side, he must be told to turn his head so that he can hear. The Claimant also received a point for the diagnosis of multi-farct on the 2010 PAS. The WVMi Nurse stated that she attempted to obtain this diagnosis information from the Claimant's physician, but was provided no confirmation of the diagnosis. Therefore, a point could not be awarded.

- 6) 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 25 points as the result of a PAS completed by WVMi in July 2011 in conjunction with his 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 he was able to participate in his own dressing and grooming to a limited degree at the time of the PAS. Therefore, he was appropriately assessed as requiring physical assistance to dress and groom. No information was provided to the WVMi Nurse at the time of the PAS to indicate that the Claimant used his wheelchair in the home and required one-person assistance to maneuver the chair.
- 4) The Claimant's total number of points remains at 25, rendering him 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 25th Day of April, 2012.

**Pamela L. Hinzman
State Hearing Officer**