



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

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

July 27, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 12, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker hours from Level D to Level C care.

In arriving at a decision, the State Hearings 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. These regulations provide that 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 Waiver Policy and Procedures Manual § 501.3).

The information submitted at your hearing revealed that you no longer meet the medical criteria required to continue receiving Level D care.

It is the decision of the State Hearings Officer to **Uphold** the proposal of the Department to reduce your homemaker hours to Level C care.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

cc: Chairman, Board of Review
Bureau of Senior Services
West Virginia Medical Institute
[REDACTED]

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1268

**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 concluded on July 12, 2011 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 April 11, 2011.

It should be noted here that the claimant's benefits under the Aged/Disabled Waiver program have continued at Level D care pending a decision.

II. PROGRAM PURPOSE:

The program entitled Aged/Disabled Waiver (ADW) is administered by the West Virginia Department of Health and Human Resources.

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

-----, Case Manager, [REDACTED]

-----, Homemaker, [REDACTED]

Kay Ikerd, RN, Bureau of Senior Services

Connie Sankoff, RN, West Virginia Medical Institute
Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the Board of Review.

This hearing was held by phone.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department's proposal to reduce Claimant's homemaker hours is correct.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Waiver Policy Manual § 501.3.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community Based Waiver Policy Manual § 501.3.2
- D-2 Pre-Admission Screening dated March 29, 2011
- D-3 Notice of Decision dated March 30, 2011

Claimants' Exhibits:

- C-1 Prescription Pad Note from [REDACTED] DO dated April 15, 2011

VII. FINDINGS OF FACT:

- 1) Claimant was re-evaluated for medical eligibility for the ADW program on March 29, 2011. A Pre-Admission Screening Form (PAS) was completed that date by Connie Sankoff, RN with the West Virginia Medical Institute (WVMI).

Claimant received a total of 25 points on the March 2011 PAS, reducing her level of care from Level D to Level C (D-2 and D-3).

- 2) -----, Claimant's case manager, stated Claimant should have been rated as level 3 in bathing, dressing and grooming. ----- submitted a statement from Claimant's physician, [REDACTED] DO which reads in pertinent part (C-1):

[Claimant] has severe bronchitis that progresses to respiratory failure easily. She has had several hospitalizations and was nearly placed on a vent[ilator]. She has increased SOB [shortness of breath] with little exertion. Please provide her with total assistance for activities of daily living.

----- testified that Claimant requires total care in her activities of daily living due to her shortness of breath. ----- stated Claimant is never left alone as she cannot care for herself. ----- stated Claimant has good days and bad days and she was experiencing a good day the date of the assessment. There are days when Claimant is able to participate in her care and some days she is unable to assist at all. ----- stated the WVMI nurse did not review her findings at the end of the assessment as was documented in the PAS (D-2).

- 3) -----, Claimant's homemaker, testified that there are times when Claimant is unable to care for herself. ----- stated that due to her multiple medical problems, her days vary in regards to what she can and cannot do. ----- stated Claimant is unable to get out of bed and needs total care in her bathing. ----- stated Claimant "falls in the gap" between requiring partial assistance at times and total care other times.
- 4) Claimant testified that she has been in the hospital several times since the assessment in March 2011. She has been told by her physician that she will never get better. She has been offered hospice care, but has declined. Claimant stated some days she cannot even hold her head up. Claimant stated she needs total care with her activities of daily living.
- 5) Connie Sankoff, RN with WVMI testified to the PAS she completed for Claimant in March 2011. Ms. Sankoff stated she was advised by Claimant that she is able to participate in some of her activities, specifically bathing, dressing and grooming. Ms. Sankoff stated in order to be rated level 3 (total care) in these areas, Claimant would never be able to participate in bathing, dressing and grooming and these activities would be taken care of completely by another individual.

Ms. Sankoff stated she always reviews the answers as given to her at the end of the assessment and was adamant that she reviewed them with Claimant and those present during the assessment. Ms. Sankoff stated she reviewed the information relayed to her, not the specific ratings Claimant was awarded.

- 6) Pertinent parts of the March 2011 PAS read (D-2):

Bathing: Client demonstrates the ability to raise her hand to her face, to wash her face; she cannot reach her feet or back to wash, due to SOB. HM [homemaker] helps her sit on the shower chair; client washes her face/ HM washes her legs, arms and back.

Dressing: Client cannot bend over to start her pants on her legs; she can lift her arms to enter her sleeves. She cannot reach her feet, to place socks or shoes on them; this causes an inability to breathe.

Grooming: Client can put lotion on her arms and face, but cannot reach her axillae to place deodorant on her underarms. She denies oral care; is edentulous. She does not comb her hair, due to SOB, with arm lifting above her face.

7) Aged/Disabled Home and Community Based Waiver Manual § 501.3.2.1 and 501.3.2.2 states:

#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 from the PAS assessment tool. Claimant was awarded 25 points as a result of a PAS completed by WVMi in March 2011 in conjunction with her annual medical evaluation.

- 2) Claimant advised the WVMI nurse that she could put her arms into the sleeves of a shirt to assist in dressing, was able to apply lotion to her arms and that she could wash her face. Claimant is able to assist in these activities and therefore does not require total care. Although testimony indicated Claimant was unable to participate in her care at times, the ability to participate in and assist with these activities regardless of the frequency indicates Claimant was correctly assessed as level 2 in bathing, dressing and grooming
- 3) The WVMI nurse correctly evaluated Claimant as requiring Level C care based on the information made known to her at the March 2011 assessment.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to reduce Claimant's homemaker hours from Level D to Level C care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 27th day of July 2011.

**Kristi Logan
State Hearing Officer**