



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

August 29, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 18, 2011. 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 the West Virginia Medical Institute (WVMI) (Aged/Disabled Home and Community Based Waiver Policy and Procedures Manual 501.3).

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 "D" to a level "C" Level of Care. As a result, you are eligible to receive 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 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, Bureau of Senior Services
[REDACTED]

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1405

**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 June 7, 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

-----, Case Manager

-----, RN

-----, Claimant's daughter

-----, Claimant's daughter

Kay Ikerd, RN-Bureau of Senior Services (BoSS)

Debbie Sickles, RN-West Virginia Medical Institute (WVMI)

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 501.3.2.1 and Chapter 501.3.2.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged and Disabled Home and Community Based Waiver Policy Manual Chapter 501.3.2.1 and Chapter 501.3.2.2
- D-2 Pre-Admission Screening Assessment form dated May 31, 2011
- D-3 Notice of Decision dated June 3, 2011
- D-4 Prescription Pad Note from [REDACTED] M.D.

VII. FINDINGS OF FACT:

- 1) On May 31, 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 "D" LOC under the program guidelines.
- 2) On June 3, 2011, the Claimant was issued a Notice of Decision, Exhibit D-3. 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 would be reduced to 124 hours per month (LOC "C" determination).
- 3) Ms. Debbie Sickles, 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. Ms. Sickles testified that the Claimant was awarded a total of 23 points during the evaluation, which qualifies for a Level "C" LOC. The PAS assessment documents "-----worker for the member, -----, RN for member" were present during the completion of the assessment with the Claimant.
- 4) The Claimant and her representatives contend that additional points should have been awarded in the areas of eating, grooming, and bowel incontinence. The PAS assessment documents that

the Claimant has paralysis of the left arm and left leg and that the Claimant's grasp was, "weak with right hand, no grip to left due to contracture." The Claimant's daughter, -----, indicated that the Claimant has one functional arm [right arm] and "cannot do things for herself."

The following addresses the contested areas:

Eating- -----, Case Manager [REDACTED] testified that the Claimant was not completely honest on the day of the assessment and indicated that the Claimant could not cut up her own food. -----noted that the Claimant's left hand is paralyzed and she suffers from weakness in her right hand and requires two hands to cut her own food. Ms. Sickles documented in the PAS assessment that the Claimant was "able to feed self, able to cut up meat or tough foods, states if she cant [sic] cut them herself, its [sic] not good to eat. Worker prepares meals, member also receives meals on wheels [sic] M-F for lunch." Ms. Sickles indicated that the Claimant's homemaker aide was present during the assessment and offered no contradictory statements to the information related by the Claimant and was in agreement with the assessment.

During the assessment, the Claimant reported that she was able to feed herself and cut up meats and tough foods. Those present during the assessment agreed to the Claimant's statements and offered no contradictory statements concerning the Claimant's abilities. Based on information related during the assessment, the nurse correctly assessed the Claimant's eating ability; therefore, no additional points can be awarded in the contested area.

Bowel Incontinence-----indicated that the Claimant is incontinent of the bowel and provided Exhibit D-4, Prescription Pad Note from [REDACTED] M.D. which documents, "pt has urine incontinence" to support such claim. This documentation only relates to the Claimant's urine incontinence and is irrelevant to the assessment of additional points in the area of bowel incontinence. -----stated that the Claimant utilizes incontinence supplies and cannot go to the bathroom without the assistance of her homemaker aide. Testimony indicated that the Claimant experiences bowel accidents and requires diaper changes. The Claimant recalled informing the nurse that she has a bowel accident, "once in awhile." In regards to bowel incontinence, Ms. Sickles documented in the PAS assessment, "denies incontinence, states it's rare she has an accident." Ms. Kay Ikerd, RN, Bureau of Senior Services testified that the criteria for a deficit in the area of bowel incontinence is three or more accidents of the bowel per week.

Policy criteria dictates that points are awarded in the area of bowel incontinence when the individual experiences three or more weekly accidents. The Claimant recalled reporting to the assessing nurse that it was rare that she had an accident with her bowel. Based on information related during the assessment, the nurse correctly assessed the Claimant as continent of the bowel and additional points in the contested area cannot be awarded.

Grooming-----contended that the Claimant was rated as total care on her previous assessment and the current assessment notes the Claimant as requiring physical assistance with grooming. Because the prior year evaluation is neither considered nor available to assessing nurse at the time of the assessment, this information was not available or relevant

to the current evaluation. -----indicated that the Claimant requires assistance in the area of grooming. Ms. Sickles testified that the maximum number of points (total care) is awarded when the individual is unable to participate in the activity. Ms. Sickles testified that the Claimant denied that she required assistance with mouth care. Ms. Sickles stated that she rated the Claimant as total care for the grooming of fingernails, toenails, and application of lotion and that the Claimant was able to “assist, not very well, in some way with brushing and combing her hair” with her one hand. Ms. Sickles documented in the PAS assessment that the Claimant required assistance with combing and brushing her hair. During the assessment, the Claimant performed a range of motion test which Ms. Sickles documented the results in the assessment as the Claimant was able to raise her right arm (functional arm) above and behind her head, but was unable to reach her right hand around to back, only to her side. The PAS assessment documents that Claimant was unable to perform the test with her left arm (paralyzed arm).

Policy dictates that a rating of total care is assessed when the individual is unable to participate in the functional area. Testimony and evidence presented during the assessment revealed that the Claimant suffers from paralysis of her left side. However, documentation indicated that the Claimant reported that she was able to participate in the area of mouth care as it relates to grooming. While the Claimant experiences difficulties in the area of grooming due to her paralysis, she reported during the assessment that she was able to participate in some aspects of the contested area; therefore, the assessing nurse correctly assessed the Claimant as requiring physical assistance and additional points in the contested area cannot be awarded.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual § 501.3.2.1 and 501.3.2.2: 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 - 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- 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) Medicaid policy dictates 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 May 31, 2011, the Claimant was assessed a total of 23 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 23.
- 4) In accordance with existing policy, an individual with 23 points qualifies as a Level “C” LOC and is therefore eligible to receive 4 hours per day or 124 hours per month 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 August, 2011.

Eric L. Phillips
State Hearing Officer