



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

June 15, 2011

-----for -----

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held May 10, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce -----'s homemaker hours from Level C care to Level B.

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 the hearing revealed that ----- no longer meets the requirements to continue receiving Level C care.

It is the decision of the State Hearings Officer to **Uphold** the proposal of the Department to reduce -----'s homemaker hours from Level C to Level B 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-852

**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 May 10, 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 February 11, 2011.

It should be noted here that the claimant's benefits under the Aged/Disabled Waiver program have continued at Level C 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:

-----, Representative for Claimant

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

-----,

-----, [REDACTED] (observing)

Kay Ikerd, RN, Bureau of Senior Services (testified by phone)

Teresa McCallister, RN, West Virginia Medical Institute (testified by phone)

Presiding at the Hearing was Kristi Logan, 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'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 Form dated January 20, 2011
- D-3 Notice of Decision dated February 14, 2011

Claimants' Exhibits:

- C-1 Prescription Pad Note by Surayia Hasan, MD dated January 27, 2011

VII. FINDINGS OF FACT:

- 1) Claimant was re-evaluated for medical eligibility for the ADW program on January 20, 2011. A Pre-Admission Screening Form (PAS) was completed that date by Teresa McCallister, RN with the West Virginia Medical Institute (WVMI).

Claimant received a total of 16 points on the January 2011 PAS, reducing her level of care from Level C to Level B (D-2).

- 2) -----, Claimant's case manager with [REDACTED] stated she was contesting Claimant not receiving a level 3 in bathing and a level 3 in orientation. ---referred to the January 2011 PAS bathing comments (D-2):

Sister reports mem[ber] showers while seated on wide tub side or on bench, and is assisted with transfer. Sister reports mem[ber] requires washing due to poor balance, holds onto wall or grab bar while she is washed by others; sister reports memb[er]'s mother always bathed her totally, and mem[ber] does not participate.

Mem[ber] demonstrates raising arms overhead with slight limits of ROM [range of motion] shoulders observed; she attempted to reach feet, and

reached to ankle area and said ok; SOB [shortness of breath] observed.
She is unable to reach her back. Obesity plays in role in ROM limits.

-----stated the PAS clearly documents that Claimant does not participate in her bathing and should have been rated a level 3 for total care.

- 3) -----presented diagnoses from Claimant's physician, [REDACTED] MD written on a prescription pad dated January 27, 2011 which reads (C-1):

1. total care for bathing
2. total care for grooming
3. totally disoriented
4. inappropriate communication
5. occasional bowel incontinence
6. unable to take medications on her own

-----stated Claimant is not oriented to person, place and time as documented on the PAS and has never known -----name, the correct date or time in the three (3) years that she has been Claimant's case manager. -----stated Claimant is very child-like due to her mental retardation and any improvement is limited by her condition. -----sated Claimant cannot remember previous conversations, events or people she has met before.

- 4) ----- with [REDACTED] testified that Claimant has occasional bowel incontinence. -----stated Claimant has chronic constipation due to her medications and often takes laxatives and stool softeners. -----stated Claimant's slow gait prevents her from reaching the bathroom in time and she has accidents. -----stated the bowel incontinence cannot be considered daily or weekly, depending on what her diet that particular week consisted of.

- 5) ----- Cheek, Claimant's sister, testified that Claimant requires total care in bathing. -----stated Claimant is unable to get herself totally clean. -----stated Claimant cannot reach all areas of her body and requires assistance with those areas. -----stated Claimant assists with shampooing her hair in the shower, but requires step-by-step instructions. Claimant has no concept of what a thorough washing is and how to get totally clean.

-----stated Claimant is totally disoriented and only knows the day and time by which television programs are on. Claimant knows when the sun is out it is daytime and nighttime is when it is dark outside. -----stated Claimant requires constant supervision due to her mental retardation and constant direction.

-----testified that her sister requires total care in all areas of life and that she has the mental state of a three (3) year old. -----stated Claimant will put her clothes on backwards and she must repeatedly instruct her on how to get dressed. -----stated Claimant has no concept of when to take her medications or the importance of taking only the prescribed amount. Her medication is already measured when Claimant is handed them to take.

- 6) Teresa McCallister, RN with WVMI testified to the PAS she completed for Claimant in January 2011. Ms. McCallister stated in order for Claimant to receive level 3 in bathing, she would have to be physically unable to take part in any of her bathing. Ms. McCallister stated Claimant was able to hold her arms out and her feet up for others to bathe her, which is assisting in her own bathing. Total care for bathing is only given to individuals who are unable to even position their limbs or turn around for bathing, as in cases of paralysis. Ms. McCallister pointed out the same guidelines are used when determining total care for dressing.

Ms. McCallister stated Claimant would need to be incontinent of the bowel three (3) or more times a week to receive occasional incontinence. Ms. McCallister stated bowel incontinence is not when a person cannot reach the bathroom in time, either due to medications or slow pace, but the inability to realize when the bowels are moving.

Ms. McCallister testified that during the assessment, Claimant was situationally oriented, by knowing who her sister was, that Ms. McCallister was a nurse and when it was time to do a certain activity. Orientation is evaluated differently for individuals with mental retardation than from individuals who may have dementia or related condition. Ms. McCallister stated someone who is given total disorientation are individuals who are comatose or are completely unaware of their surroundings and nonresponsive.

Ms. McCallister stated Claimant was able to place her medications in her mouth when given and she was properly rated as prompting/supervision in medication administration. All parties denied needing to crush Claimant's medications or physically placing them in her mouth.

- 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 on the PAS assessment tool. Claimant was awarded a total of 16 points as the result of a PAS completed by WVMi in January 2011 in conjunction with her annual medical evaluation.
- 2) The information used by WVMi when evaluating an individual's functional abilities in the home is derived by the assessment interview and the assessing nurse's observations of the individual. The diagnoses submitted by Claimant's physician were generalized statements regarding Claimant's functional abilities and the presumption that her deficiencies meet WVMi criteria. The physician has no way of knowing how Claimant functions in her home and the statement will have no bearing in this decision.
- 3) Although Claimant may not possess the cognitive abilities to bathe or dress herself appropriately, she has the ability to assist in these areas simply by positioning herself so that she may be bathed and raising her arms and legs so that she may be dressed. To receive total care in bathing or dressing, Claimant would need to be physically unable to participate in anyway. Claimant's mental incapacity cannot be considered in determining her functional abilities to assist in dressing and bathing.
- 4) Claimant's sister denied any bowel incontinence during the assessment. Additionally, Claimant does not meet the criteria of incontinent episodes of at least three (3) times weekly to receive a deficit in this area.
- 5) Claimant was able to communicate, was alert and aware of her surroundings at the time of the assessment. While her conversations may at times be inappropriate and her ability to understand situations limited due to the mental retardation, Claimant cannot be considered totally disoriented. Claimant would have to be unable to interact even minimally with others, be completely unaware of her surroundings and all communication inappropriate. Claimant was rated intermittent disorientation correctly.
- 6) Claimant was correctly evaluated at her January 2011 assessment as requiring Level B care.

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 C to Level B care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 15th day of June 2011.

Kristi Logan
State Hearing Officer