



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

August 2, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 20, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker hours from Level C to Level B 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 to continue receiving services at Level C.

It is the decision of the State Hearings Officer to **Uphold** the proposal of the Department to reduce your homemaker hours 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-918

**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 20, 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 March 25, 2011.

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

-----, Claimant

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

-----, Homemaker RN, [REDACTED]

-----, Homemaker

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 dated March 9, 2011
- D-3 Notice of Decision dated March 28, 2011

Claimants' Exhibits:

- C-1 Medical Record dated March 11, 2011 from [REDACTED] M.D., F.A.C.P.

VII. FINDINGS OF FACT:

- 1) Claimant was re-evaluated for medical eligibility for the ADW program on March 9, 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 15 points on the March 2011 PAS, reducing her level of care from Level C to Level B (D-2).

- 2) -----, Claimant's case manager, stated Claimant should have received a point for angina, medication administration and a level 3 in transferring. ----- presented medical records from Dr. [REDACTED] dated March 11, 2011 which reads in pertinent parts (C-1):

Diagnosis: Diabetes mellitus, hyperlipidemia, angina, osteoarthritis, osteoporosis, depression and anxiety, hypertension

Current Medications: Xanax, Sinequan, Dyazide, Actos, Lipitor, Allegra, nitroglycerin, Lortab, Boniva

----- testified that she tried several times unsuccessfully to obtain the diagnosis of angina from Dr. [REDACTED] after the Potential Denial letter, the delay due to his absence from his office.

----- stated Claimant is legally blind and indentifies her prescription medications by feel. ----- testified that Claimant's homemaker prompts Claimant to take her medications on time and supervises to ensure that she is taking the correct medications and dosage.

3) -----, Homemaker RN testified that Claimant has fractures of the spine and has been hospitalized on numerous occasions in the last six (6) weeks. ----- stated Claimant wears a back brace and is not an eligible candidate for surgery. ----- stated Claimant has pain in her back and on bad days, cannot get up on her own. [REDACTED] stated when Claimant is having a bad day with her back, she needs physical assistance in transferring.

----- stated Claimant had angina and a prescription for nitroglycerin prior to the assessment in March 2011. ----- stated Claimant reported the angina at her case reviews in November 2010 and May 2011. ----- testified that Claimant's nitroglycerin is used on an as need basis and she may have forgotten to advise the WMVI nurse of the condition since she does not take the medication on a regular basis.

4) -----, Claimant's homemaker, testified that Claimant has taken nitroglycerin for chest pain for years. ----- stated Claimant keeps a bottle in the kitchen and a bottle by her bed.

5) Teresa McCallister, RN with WVMi testified to the PAS she completed on Claimant in March 2011. Ms. McCallister stated Claimant denied having any symptoms of angina and did not mention having a prescription for nitroglycerin. Ms. McCallister stated without a diagnosis or prescription medication for a condition, she could not award a point for said condition. Ms. McCallister called Dr. [REDACTED] office on March 18, 2011 to confirm a diagnosis of arthritis, and no mention of angina was made at that time.

Ms. McCallister testified a point was given to Claimant for pain due to arthritis. Ms. McCallister stated she was not aware of any problems with Claimant's back or any need for physical assistance in transferring. Claimant also reported administering her own medications and denied needing reminders of when to take them.

6) 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 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
- #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 15 points as the result of a PAS completed by WVMi in March 2011 in conjunction with her annual medical evaluation.
- 2) Claimant failed to disclose to the WVMi nurse that she had angina and had a prescription medication for the condition. Although a diagnosis of angina was later obtained from Claimant's physician in May 2011, it was well outside of the two week period of consideration following the completion of the PAS to be considered.
- 3) Claimant did not advise the WVMi nurse that she needed physical assistance in transferring due to her back problems during the assessment or the need for assistance in medication administration. Any decline in Claimant's condition subsequent to the assessment cannot be considered as the WVMi nurse could only make a determination in functional deficits based on the information known to her at the time.
- 4) The WVMi nurse correctly assessed Claimant based on the information provided to her during the March 2011 medical assessment. Claimant no longer meets the criteria to continue receiving Level C 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 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 2nd day of August 2011.

**Kristi Logan
State Hearing Officer**