



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review

Earl Ray Tomblin
Governor

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

July 7, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held June 21, 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 criteria to continue receiving services at Level C care.

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-949

**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 June 21, 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 1, 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:

-----, Claimant

-----, Homemaker

-----, Homemaker RN,

-----, Case Manager,

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 March 14, 2011
- D-3 Notification Letter dated March 24, 2011

VII. FINDINGS OF FACT:

- 1) Claimant was re-evaluated for medical eligibility for the ADW program on March 14, 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 they were contesting Claimant not receiving a level 3 for bowel incontinence, a level 3 in transferring, a level 3 in vision and a point for arthritis.

-----testified that Claimant has a diagnosis of incontinence from her physician, and although Claimant was rated a level 3 for urinary incontinence, Claimant was only rated a level 2 for bowel incontinence, which is occasional incontinence. ----- stated Claimant has daily bowel accidents due to her medications and even requested an afternoon hearing to accommodate this condition.

-----stated Claimant has arthritis, but she was unable to obtain a diagnosis from Claimant's physician verifying the condition. Claimant requires hands on assistance in transferring as a result of her polio. -----stated Claimant has cataracts, but is not a candidate for surgery and should have been rated a level 3 in vision, impaired/not correctable.

- 3) Claimant testified that she has had two (2) laser surgeries to correct bleeding behind her eyes and she was told by her physician that she is not a candidate for cataract surgery due to edema. Claimant stated she can no longer read and her homemaker must read to her. Claimant stated she cannot read the labels on her medications bottles. Claimant stated she goes back to her ophthalmologist in July 2011 to check the progression of her vision and states she was told she could possibly go blind.

Claimant stated she has daily bowel incontinence and thought she had reported this to the nurse during the assessment. Claimant stated her medications cause her to have bowel accidents, usually in the mornings, after she has taken her medications.

Claimant stated she found out she had arthritis from an x-ray taken after she fell. Claimant stated she has had a bone density test, but has not received the results yet. Claimant stated she does not take any pain medication for the arthritis because she does not want to take narcotics. Claimant stated one (1) leg is shorter than the other due to having polio and she has to take breaks often and rest. Claimant stated her homemaker stays evenings and weekends with her already and does not know how she would manage if her homemaker hours reduced.

- 4) Teresa McCallister, RN with WVMi testified to the assessment she completed in March 2011 for Claimant. Ms. McCallister stated Claimant reported weekly bowel incontinence during the assessment and was therefore rated level 2 for occasional incontinence. Ms. McCallister stated Claimant would need to have bowel incontinence three (3) or more times weekly in order to be rated level 3 for total incontinence.

Ms. McCallister stated during the assessment, she witnessed Claimant transferring out of a chair by pushing off of the chair with her hands and then using a cane to rise to a standing position. Ms. McCallister noticed that Claimant had difficulty getting up from a sitting position and Claimant reported that she had requested a lift chair to assist her. Ms. McCallister stated Claimant did not mention needing physical assistance to transfer during the interview.

Ms. McCallister stated in regards to Claimant's vision, Claimant advised her that she could read with the aid of glasses and could see the television from twenty (20) feet away. Claimant also demonstrated reading the labels from her prescription bottles. Ms. McCallister stated when determining an individual's level for vision, the assessment is a functional one rather than medical. Claimant is able to function in her home with her vision and was rated level 2.

Ms. McCallister stated she requested a diagnosis of arthritis from Dr. Rasheed on March 27, 2011 but did not receive a response. Ms. McCallister stated without a diagnosis or a prescription medication to treat arthritis, she could not award a point in that area.

- 5) 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 15 points as the result of a PAS completed by WVMi in March 2011 in conjunction with her annual medical evaluation.
- 2) Claimant did not have a physician's diagnosis for arthritis or a prescription for arthritis medication. A point cannot be awarded in this area based solely on Claimant's statement of the condition.
- 3) Claimant did not report the need for physical assistance in transferring and the PAS documented only occasional bowel incontinence per Claimant's statement. The WVMi

nurse correctly evaluated Claimant as level 2 in transferring and bowel incontinence based on the information made known to her at the time of the assessment.

- 4) Claimant reported the ability to read and watch television to the WVMI nurse despite her eye condition at the assessment. Claimant also demonstrated the ability to read the labels of her prescription medications. Claimant was able to function in her home in regards to her sight in March 2011 and was properly assessed as a level 2 for vision. Although Claimant reported a decline in her vision since the assessment, the WVMI nurse correctly evaluated Claimant's functionality in the home at that time.

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 7th day of July 2011.

Kristi Logan
State Hearing Officer