



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

Rocco S. Fucillo
Cabinet Secretary

July 19, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 18, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker hours under the Aged/Disabled Waiver program from Level C to Level B care.

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/Disabled Waiver program is based on current policy and regulations. These regulations state 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 WVMi (Aged/Disabled Home and Community Based Waiver Policy and Procedures Manual § 501.5).

The information submitted at your hearing revealed that you meet the medical criteria required to continue receiving Level C care.

It is the decision of the State Hearing Officer to **Reverse** the proposal of the Department to reduce your homemaker hours to Level B care.

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1254

**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 ----- held on July 18, 2012. This hearing was held in accordance with the provisions found in the West Virginia Department of Health and Human Resources' Common Chapters Manual, Chapter 700. This Fair Hearing was convened on a timely appeal, filed April 27, 2012.

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

II. PROGRAM PURPOSE:

The Aged/Disabled Waiver (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

-----, Witness for Claimant

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

Karen Keaton, 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 Waiver Services Policy Manual § 501.5.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Waiver Services Policy Manual § 501.5.1
- D-2 Pre-Admission Screening dated March 29, 2011
- D-3 Pre-Admission Screening dated February 28, 2012
- D-4 Notice of Decision dated March 1, 2012

Claimants' Exhibits:

- C-1 Correspondence from -----, MD dated June 1, 2012

VII. FINDINGS OF FACT:

- 1) Claimant was reevaluated for medical eligibility for the Aged/Disabled Waiver program on February 28, 2012. A Pre-Admission Screening (PAS) was completed that date by Karen Keaton, RN, with the West Virginia Medical Institute (WVMI) (D-3).

Claimant received 15 points on the February 2012 PAS, which equates to a Level B care. Claimant needed three (3) additional points to continue receive Level C care (D-3).

- 2) The February 2012 assessment was conducted at ----- Hospital as Claimant had recently been admitted for a hysterectomy performed by Dr. ----- . Claimant disclosed having incontinence of bladder one (1) time per week and incontinence of bowel 1-2 times monthly. Claimant was assessed as a level 1, continent of bladder and bowel. However, during Karen Keaton's testimony regarding the February 2012 PAS, she admitted based on Claimant's disclosure that she should have assessed Claimant as occasionally incontinent of both bladder and bowel, which is a level 2. Two (2) additional points will be awarded in the area of incontinence (D-3).

- 3) Claimant's husband, -----, testified Claimant should have been awarded one (1) additional point for arthritis. Claimant advised Ms. Keaton during the assessment that she had osteoarthritis of the knee. A letter from Claimant's general practitioner, -----, MD, dated June 1, 2012, was submitted and verified the diagnosis of arthritis of the knee for Claimant (C-1).
- 4) Ms. Keaton testified she reviewed Claimant's medical record at the hospital during the assessment and was unable to find a diagnosis of arthritis. Without a diagnosis from a physician or a prescription medication to treat arthritis, Ms. Keaton stated she could not award a point for the condition (D-3). Ms. Keaton stated she did not contact Dr. -----, Claimant's general practitioner, to verify the diagnosis as it should have been in Claimant's medical record. Additionally, it was pointed out the letter from Dr. ----- was written two (2) months after the date of the assessment and could not be considered a timely submission of additional documentation to update the PAS.
- 5) Aged/Disabled Waiver Services Policy Manual § 501.5.1.1 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
- #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) 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 February 2012 in conjunction with her annual medical evaluation.
- 2) The Department conceded that Claimant should have been assessed as a level 2 for incontinence of bladder and bowel based on her disclosure during the medical assessment. Two (2) additional points will be awarded to Claimant in this area.
- 3) Testimony indicated a review of Claimant's medical records from her hospitalization failed to document a diagnosis of arthritis, a condition that was reported by Claimant during the medical evaluation. However, Claimant's attending physician during her hospitalization was a gynecologist, not her general practitioner who completed the Medical Necessity Evaluation Request required for medical reevaluations. It is reasonable that a diagnosis of arthritis would not be contained in these records and this area should have been further explored by the WVMI nurse.
- 4) Although the verification of a diagnosis of arthritis was past the allotted two (2) time period for which additional documentation is accepted by the Department, the diagnosis of arthritis was verified by a physician and this condition was not fully evaluated during the medical assessment.
- 5) One (1) additional point will be awarded in the area of medical conditions/symptoms for arthritis.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to reduce Claimant's homemaker hours under the Aged/Disabled Waiver program to Level B. Three (3) points will be awarded to Claimant in the areas of bladder incontinence, bowel incontinence and arthritis.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 19th day of July 2012

**Kristi Logan
State Hearing Officer**