



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

Rocco S. Fucillo
Cabinet Secretary

September 6, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 4, 2012. 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 Services 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 West Virginia Medical Institute (WVMI) (Aged/Disabled Home and Community Based Waiver Policy and Procedures Manual 501.5.1).

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 LOC should be reduced from a level "C" to a level "B".

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
PPL

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1379

**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 Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This hearing convened on September 4, 2012, on a timely appeal, filed May 5, 2012.

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.

This hearing was originally scheduled for July 31, 2012, and rescheduled at the discretion of the State Hearing Officer due to technical difficulties with the teleconferencing equipment.

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

-----, Claimant's representative

Kay Ikerd, RN, Bureau of Senior Services (BoSS), Department representative

Heather Randolph, RN, West Virginia Medical Institute (WVMI), Department witness

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 501.5.1.1(a) and 501.5.1.1 (b)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged and Disabled Home and Community Based Waiver Policy Manual Chapter 501.5.1.1(a) and 501.5.1.1 (b)
- D-2 Pre-Admission Screening dated April 25, 2012
- D-3 Notice of Decision dated April 30, 2012
- D-4 Pre-Admission Screening dated May 11, 2011

VII. FINDINGS OF FACT:

- 1) On April 25, 2012, the Claimant was medically assessed to determine her continued eligibility and to assign an appropriate Level of Care (LOC) for participation with the Aged and Disabled Waiver Services (ADW) program. Prior to the re-evaluation, the Claimant was assessed at a Level "C" LOC (Exhibit D-4) (20 points) under the program guidelines.
- 2) Heather Randolph, WVMI assessing nurse, completed the Pre-Admission Screening (PAS) assessment (Exhibit D-2), as part of her medical assessment of the Claimant. Ms. Randolph testified that the Claimant was awarded a total of 16 points which resulted in a Level "B" LOC determination.
- 3) On April 30, 2012, the Claimant was issued a Notice of Decision (Exhibit D-3), which documents the approval of her medical eligibility for the ADW program and the reduction of her homemaker service hours which cannot exceed 93 monthly hours.

- 4) -----, the Claimant's representative and Homemaker Aide, acknowledged that he was not present at the assessment and incomplete information regarding his mother's abilities may have been relayed. ----- contended that additional points should have been awarded in the areas of walking, grooming, bathing, and bowel incontinence.

The following addresses the contested areas:

Walking----- testified that his mother receives cortisone injections every three months. ----- indicated that the injections aid in his mother's abilities for approximately one month, but she requires physical assistance once the injection subsides. Testimony indicated that due to the Claimant's physical limitations, she requires a wheelchair outside of the home. Ms. Randolph testified that during the assessment she observed the Claimant ambulate independently, but noted in the PAS that the Claimant utilized a cane to ambulate in the home. Based on the reported information, Ms. Randolph assessed the Claimant as requiring a supervised/assistive device, attributing one point toward the LOC.

Grooming----- indicated that his mother can participate in grooming by brushing her hair, but requires physical assistance to complete the task and correct mistakes. Ms. Randolph testified that the maximum number of points is awarded for grooming when the individual requires total care and is unable to participate in the activity. Ms. Randolph documented in the PAS that the Claimant required physical assistance with hair and nail care, but was independent with her oral care. Based on the reported information, the Claimant was assessed as requiring physical assistance and one point was awarded to her LOC.

Bathing----- indicated that his mother can wash her face, but requires assistance with other aspects of bathing and transferring in and out of the tub. Ms. Randolph testified that the maximum number of points is awarded for bathing when the individual requires total care and is unable to participate in the activity. Ms. Randolph documented in the PAS that "member is always able to wash her arms, face and upper body" and noted that the Claimant required assistance with bathing her back. Ms. Randolph purported that because the Claimant was able to participate in bathing she assessed her as requiring physical assistance and awarded one point to the LOC.

Bowel Incontinence----- testified that his mother experiences episodes of incontinence with her bowel at least 80% of the time. Ms. Randolph documented in the PAS that the Claimant reported that she had not experienced episodes of incontinence "for the past year or longer." Based on the reported information, Ms. Randolph concluded that the Claimant was continent of the bowel.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.5.1.1(a) and (b) documents there are 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- 0-62 range of hours per month
- Level B - 10 points to 17 points-63-93 range of hours per month
- Level C - 18 points to 25 points-94-124 range of hours per month
- Level D - 26 points to 44 points- 125-155 range of hours per month

VIII. CONCLUSIONS OF LAW:

- 1) Medicaid policy stipulates that an individual's LOC is determined by the number of points awarded on the PAS assessment tool.
- 2) On April 25, 2012, the Claimant was awarded a total of 16 LOC points as part of her PAS assessment, which resulted in a Level "B" LOC determination.
- 3) The matter before the Board of Review is whether or not the WVMi nurse correctly assessed the Claimant based on information relayed during the assessment.
- 4) During the assessment, the Claimant reported the use of an assistive device and was observed ambulating independently. The Claimant did not require one-person physical assistance with her ability to ambulate and was correctly assessed as requiring an assistive device. Therefore, an additional point in the contested area cannot be awarded.

- 5) During the assessment, the Claimant reported an ability to participate with grooming by completing her own oral care. Because the Claimant does not require total care assistance in the contested area, she was correctly assessed as requiring physical assistance and an additional point in the contested area cannot be awarded.
- 6) During the assessment, the Claimant reported an ability to wash her arms, face and upper body. Because the Claimant does not require total care assistance with bathing, she was correctly assessed as requiring physical assistance and additional points in the contested cannot be awarded.
- 7) During the assessment, the Claimant and her representatives denied any episodes of bowel incontinence within the past year. Therefore, the assessing nurse correctly assessed the Claimant as continent and additional points cannot be awarded.
- 8) As a result of evidence presented during the hearing process, no additional points may be attributed to the Claimant's LOC. The Claimant's total points are 16. In accordance with existing policy, an individual with 16 points qualifies as a Level B determination and is therefore eligible to receive a maximum of 93 homemaker service hours.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the Department's proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled, Title XIX (HCB) Waiver Services program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ day of September 2012.

Eric L. Phillips
State Hearing Officer