



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

August 10, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 31, 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 care to Level B.

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 WVM (Aged/Disabled Home and Community Based Waiver Policy and Procedures Manual § 501.5).

The information submitted at your hearing revealed that you no longer meet the medical criteria to continue receiving services at Level C care.

It is the decision of the State Hearing Officer to **uphold** 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-1433

**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 31, 2012 by telephone conference. 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 May 23, 2012.

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 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

-----, Homemaker

Kay Ikerd, RN, Bureau of Senior Services

Teresa McCallister, RN, West Virginia Medical Institute

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 27, 2012
- D-3 Pre-Admission Screening dated April 19, 2011
- D-4 Notice of Decision dated April 4, 2012

VII. FINDINGS OF FACT:

- 1) Claimant was reevaluated for medical eligibility for the Aged/Disabled Waiver program on March 27, 2012. A Pre-Admission Screening (PAS) was completed that date by Teresa McCallister, RN, with the West Virginia Medical Institute (WVMI) (D-2).

Claimant received 17 points on the March 2012 PAS, which equates to a Level B care. Claimant needed one (1) additional point to continue receiving homemaker services under Level C care (D-2).

- 2) -----, Claimant's homemaker and daughter-in-law, testified Claimant has emphysema and chronic obstructive pulmonary disease (COPD). The diagnosis of COPD was omitted from the PAS. ----- stated Claimant can no longer use continuous oxygen due to a build-up of carbon dioxide in her blood stream. ----- stated Claimant uses oxygen through her Bi-Pap machine, which she uses several times daily. ----- stated Claimant's hearing is impaired, but she refuses to wear hearing aids.
- 3) Claimant testified she has been in a coma twice due to using continuous oxygen and she can no longer use oxygen through her nose. Claimant stated she has shortness of breath due to the emphysema and COPD.
- 4) Teresa McCallister, RN with WVMI, testified to the PAS she completed for Claimant in March 2012. Ms. McCallister stated the only difference in this year's PAS and the previous year's PAS is the point that was given in 2011 for continuous oxygen. Ms.

McCallister stated that since Claimant no longer uses oxygen continuously, she could not give her a point in that area.

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 17 points as the result of a PAS completed by WVMi in March 2012 in conjunction with her annual medical evaluation. Based on the points received on the PAS, Claimant was evaluated at a Level B care.
- 2) Claimant no longer uses oxygen continuously and did not receive a point in that area on the March 2012 PAS. Regardless of the reason as to why Claimant no longer uses oxygen continuously, a point cannot be awarded for Professional/Technical Needs. Claimant was given a point for dyspnea (shortness of breath) and a point for "other" for Medical Conditions/Symptoms. The diagnosis of COPD would not have increased

Claimant's points. There were no other areas of contention regarding Claimant's medical evaluation presented.

- 3) Claimant no longer meets the medical criteria required to continue receiving services at 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 under the Aged/Disabled Waiver program 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 10th day of August 2012

Kristi Logan
State Hearing Officer