



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 30, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 28, 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 D to Level C 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 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 § 501.5).

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

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to reduce your homemaker hours to Level C 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
----- County Commission on Aging

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1687

**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 August 28, 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 June 19, 2012.

It should be noted here that the Claimant's benefits under the Aged/Disabled Waiver program have continued at Level D 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:

-----, Witness for Claimant
-----, Case Manager, ----- County Commission on Aging
-----, Homemaker RN, ----- County Commission on Aging

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 May 29, 2012
- D-3 Pre-Admission Screening dated May 26, 2011
- D-4 Notice of Decision dated December 23, 2011
- D-5 Notice of Decision dated June 4, 2012

VII. FINDINGS OF FACT:

- 1) Claimant was re-evaluated to determine medical eligibility for the Aged/Disabled Waiver program on May 29, 2012. A Pre-Admission Screening (PAS) form was completed that date by Teresa McCallister, RN with the West Virginia Medical Institute (WVMI) (D-2).

Claimant received 25 points on the May 2012 PAS, which equates to a Level C care (D-5). One (1) additional point was required for Claimant to continue receiving services at Level D care.

- 2) Teresa McCallister testified to the findings on the PAS she completed for Claimant in May 2012. Ms. McCallister stated this year's assessment was the same as the 2011 assessment except that Claimant was not awarded a point for arthritis. Ms. McCallister stated in 2011, Claimant was given a point for arthritis due to the prescribed medication for Meloxicam. However, Ms. McCallister stated Claimant was no longer taking Meloxicam and did not have a physician's diagnosis for arthritis therefore a point could not be awarded for that medical condition for the current assessment (D-2 and D-3).

- 3) -----, Claimant's Case Manager with ----- County Commission on Aging, stated Claimant had changed physicians in the last year and the arthritis medication had not been prescribed by her current physician. ----- stated she attempted to obtain verification of the diagnosis, and only received verification the date of the hearing.

Ms. McCallister stated she felt the May 2012 PAS was accurate, except for the point for arthritis, and knew the documentation for diagnosis was untimely and would not be considered at the hearing.

- 4) 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- 0 - 62 hours per month
- Level B- 10 points to 17 points- 63 - 93 hours per month
- Level C- 18 points to 25 points- 94 - 124 hours per month
- Level D- 26 points to 44 points- 125 - 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 25 points as the result of a PAS completed by WVMi in May 2012, in conjunction with her annual medical evaluation. Based on the points received on the PAS, Claimant was evaluated at a Level C care.

- 2) The only area of contention regarding the May 2012 PAS was a point for arthritis. At the time of the assessment, Claimant did not have a prescribed medication or a physician's diagnosis for the condition. A point cannot be awarded in this area.
- 3) Claimant no longer meets the medical criteria required to continue receiving services at a Level D 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 C care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 30th day of August 2012

**Kristi Logan
State Hearing Officer**