



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

September 26, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 25, 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 WVM (Aged/Disabled Home and Community Based Waiver Policy and Procedures Manual § 501.5).

The information which was submitted at your hearing revealed that you no longer meet the medical criteria to receive 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
Central WV Aging Services

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1800

**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 convened on September 25, 2012, held 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 July 13, 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's Medical Attorney-in-Fact
-----, Case Manager, Central WV Aging Services
-----, Homemaker RN, Central WV Aging Services

Kay Ikerd, RN, Bureau of Senior Services
Courtenay Smith, 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 June 19, 2012
- D-3 Notice of Decision dated June 29, 2012
- D-4 Pre-Admission Screening dated June 30, 2011

VII. FINDINGS OF FACT:

- 1) Claimant was re-evaluated for medical eligibility for the Aged/Disabled Waiver program on June 19, 2012. A Pre-Admission Screening (PAS) was completed that date by Courtenay Smith, RN, with the West Virginia Medical Institute (WVMI) (D-2).

Claimant received fifteen (15) points on the June 2012 PAS, which equates to a Level B care (D-3). A minimum of eighteen (18) points are required to receive services at Level C care (D-1).

- 2) The areas in contention on the June 2012 PAS are angina at rest, angina at exertion, and bowel incontinence. Claimant's son, -----, testified that he was present during the assessment and forgot to show the WVMI nurse Claimant's prescription for Nitro-stat, which is prescribed for chest pain. ----- stated the Nitro-stat is kept separate from Claimant's medications, where it is readily accessible in case she experiences chest pain. ----- stated the WVMI nurse did not ask for the prescription, but he stated he advised the nurse of the Nitro-stat.

----- stated Claimant has bowel incontinence 1-2 times a month. He stated his mother had told the WVMI nurse that she was not incontinent of either bladder or bowel, but ----- told the nurse otherwise while he walked her out to her car. ----- testified that

he advised the WVMi nurse of the bowel incontinence and Nitro-stat outside of the home, after the assessment was over. ----- added that he did not contradict his mother during the assessment about her incontinence issues as he did not want to embarrass her.

- 3) Courtenay Smith, RN with WVMi, testified to the June 2012 assessment. Ms. Smith stated Claimant denied having any chest pain and she had no reason to further explore that medical condition. Ms. Smith stated Claimant denied having incontinence, which was corrected by ----- while they were walking out to her car. Ms. Smith stated ----- advised her of the bladder incontinence at that time, but she denied being told of the bowel incontinence or the Nitro-stat prescription. Ms. Smith stated she amended the PAS to reflect a deficit for bladder incontinence once she returned to her office, and had bowel incontinence or the Nitro-stat been mentioned to her, the PAS would have reflected that as well (D-2).

- 4) Pertinent parts of the June 2011 PAS document (D-4):

Angina with rest/exertion: Applicant denies current chest pain but she states she has had it at rest and on exertion and was prescribed NTG [nitroglycerin] tabs for treatment. Rx [prescription] sublingual tabs noted.

Continence: bowel/bladder: member stated she has bladder incontinence about once weekly. Her son states she wet herself during the night last night. He also indicated that she has bladder incontinence 4 or more times weekly. She has occasional bowel incontinence 1-2 x monthly.

- 5) Pertinent parts of the June 2012 PAS document (D-2):

Angina with rest/exertion: member denies chest pain with rest or on exertion. No dx [diagnosis] for rx med noted.

Continence: bowel/bladder: member denies any urine leakage but her son states she uses protective briefs due to urine leakage 3 or more times per week. She does not have any bowel accidents.

- 6) 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 15 points as the result of a PAS completed by WVMi in June 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) Contradictory testimony was presented regarding whether or not the WVMi nurse was made aware of Claimant's bowel incontinence or use of nitroglycerin. Credible testimony from the WVMi nurse held that she amended the June 2012 PAS regarding bladder incontinence, and it is reasonable that if she had knowledge of bowel incontinence or the use of nitroglycerin, points would have been added to the PAS for those areas as well. Claimant denied experiencing chest pain and although incontinence issues may be embarrassing for some individuals, there is no reason to believe that angina at rest or exertion should not have been discussed in Claimant's presence.
- 3) Claimant was correctly assessed as requiring Level B 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 B care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 26th day of September 2012

Kristi Logan
State Hearing Officer