



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 28, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 20, 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 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 WVMH (Aged/Disabled Home and Community Based Waiver Policy and Procedures Manual § 501.5).

The information submitted at your hearing revealed that you were correctly assessed for Level C care.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to reduce your homemaker hours under the Aged/Disabled Waiver program.

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Bureau of Senior Services

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1843

**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 held on September 20, 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 July 24, 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:

-----, Claimant

-----, Medical Attorney-in-Fact

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

Teresa McCallister, 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 proposed reduction of 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 28, 2012
- D-3 Notice of Decision dated July 6, 2012
- D-4 Pre-Admission Screening dated May 2, 2011

VII. FINDINGS OF FACT:

- 1) Claimant was re-evaluated for medical eligibility for the Aged/Disabled Waiver program on June 28, 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 twenty-five (25) points on the June 2012 PAS, which equates to a Level C care (D-3). A minimum of twenty-six (26) points are required to receive services at Level D care (D-1).

- 2) The areas in contention on the June 2012 PAS are arthritis, dyspnea, dysphagia and hearing. -----, Claimant's representative, testified she was unaware that Claimant's physician had not completed and returned the verification letter sent by Teresa McCallister, until she was getting copies of his medical records to present at the hearing. ----- stated the blank form was in Claimant's records, and Dr. ----- signed the form on September 6, 2012, verifying the diagnoses of arthritis, dyspnea and dysphagia (C-1).

----- stated Claimant is hard of hearing and requires assistance to insert his hearing aids. ----- stated someone must also change the batteries for him. Even with hearing aids, ----- testified she must speak in a loud voice to be heard.

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

Dyspnea: No md dx [physician diagnosis]; no rx med [prescription medication] present. Mem[ber] and HM [homemaker] report SOB [shortness of breath] most of the time, which increases with any activity; she reports breathing is more shallow than used to be. He presents congested sounding cough during visit, and reports he had Bronchitis during winter. I informed all that I will clarify use of this dx with physician.

Significant arthritis: No md dx; no rx med present. Mem and HM report affecting knees, hips, and fingers; stiffness observed. Mem extended fingers and closed fairly tightly, then reported pain in fingers with this activity. I informed all that I will clarify this dx with physician.

Dysphagia: No md dx; HM reports mem chokes easily, esp[ecially] when eating too quickly. This has been discussed with physician, and was told to eat more slowly. I informed all that I will check with physician re: use of this dx.

Hearing: Mem requires louder voice and repetition during visit; he is wearing aids bilaterally and volume was increased by HM at start of visit.

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 June 2012, in conjunction with his annual medical evaluation. Based on the points received on the PAS, Claimant was evaluated at a Level C care.
- 2) The matter to be decided upon is whether or not the WVMi nurse correctly assessed Claimant based on the information that was available at the time of the medical evaluation. The WVMi nurse sent a verification letter to Claimant's physician on July 5, 2012, to confirm diagnoses of arthritis, dyspnea and dysphagia. This information was not returned in the two (2) week time period allotted for the submission of additional documentation to WVMi. Although Claimant's representative presented verification of the diagnoses at the hearing, this information was not available to the WVMi nurse at the time of the evaluation.
- 3) Claimant was assessed as a level 2 for hearing – impaired/correctable. According to the WVMi nurse's documentation and testimony from Claimant's representative, Claimant was able to hear to a degree with the use of hearing aids. The assessment in the area of hearing is one of the ability to hear. Claimant was correctly assessed in this area.
- 4) No additional points can be awarded to the June 2012 PAS. Claimant was correctly assessed as requiring 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 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 28th day of September 2012

Kristi Logan
State Hearing Officer