



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 24, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 18, 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-1954

**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 18, 2012, on a timely appeal, filed July 31, 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.

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's Attorney-In-Fact and daughter

-----, Claimant's daughter

Pam Pushkin, RN, Bureau of Senior Services (BoSS), Department representative

Sherry Howell, 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 Notice of Decision dated July 26, 2012
- D-3 Pre-Admission Screening dated July 18, 2012
- D-4 Pre-Admission Screening dated July 20, 2011

Claimant's Exhibits:

- C-1 Patient History from -----, M.D. dated March 5, 2012*

*This exhibit was not provided to all parties prior to the hearing due to the hospitalization of one of the Claimant's representatives and was submitted upon the conclusion of the hearing. This exhibit was entered into the hearing record and given the necessary weight in the State Hearing Officer's decision.

VII. FINDINGS OF FACT:

- 1) On July 18, 2012, the Claimant was medically assessed to determine his continued eligibility and to assign an appropriate Level of Care (LOC) for participation with the Aged and Disabled Waiver Services (ADW) program.
- 2) A Pre-Admission Screening (PAS) (Exhibit D-4) was completed with the Claimant on July 20, 2011, in which 10 points were awarded for a Level "B" LOC determination. However, in April 2012, the Claimant requested an increase in his LOC determination with BoSS and this request

was approved, resulting in an increase in the Claimant's LOC from a Level "B" determination to a Level "C" determination.

- 3) Sherry Howell, WVMi assessing nurse, completed PAS (Exhibit D-3), as part of the Claimant's yearly medical assessment for the ADW program. Ms. Howell testified that as a result of the assessment, the Claimant was awarded a total of 17 points which resulted in a Level "B" LOC determination.
- 4) On July 26, 2012, the Claimant was issued a Notice of Decision (Exhibit D-2), which documents the approval of his medical eligibility for the ADW program and the reduction of his monthly budget to \$1379.62 (Level "B" determination) as a Personal Options participant under the ADW program.
- 5) The Claimant's representatives contend that additional points should have been awarded on the PAS in the areas of dressing, grooming and wheeling. Testimony indicated that the Claimant has been diagnosed with cortical basal degeneration and his condition has deteriorated which requires constant care.

The following addresses the contested areas:

Dressing and Grooming-The Claimant's representatives contended that the Claimant requires total care in these contested areas because he cannot raise his arms above his head. The Claimant's representatives questioned why the WVMi nurse did not administer an assessment of the Claimant's vital signs as previous nurses in the past and requested the completion of a new assessment. Ms. Howell testified that the assessment of vital signs is not required and the nurse only assesses the individual's height and weight. In regards to dressing and grooming, Ms. Howell assessed the Claimant as a Level 2, requiring physical assistance. Ms. Howell documented the Claimant's functional ability of dressing in the PAS as "Shirt-sits and puts shirt on, needs help putting over head and pulling down due to limited ROM. Pants-Due to decreased feeling in rt. Leg wife assists him in getting legs into pants legs, once started can pull up. Socks/Shoes-needs help putting socks and shoes on due to difficulty bending, daughter assists. Button/Zipper-can manipulate without help, takes time." Ms. Howell documented the Claimant's functional ability of grooming in the PAS as "Hair Care-keeps cut short, combs without help. Nail care-[Claimant] does fingernails, daughter does toenails. Oral care-has dentures and he cares for them. Skin care-[Claimant] applies Rx lotion to upper body, daughter does lower body such as legs, feet. [Claimant] uses electric razor, daughter will get areas he misses."

Wheeling-Testimony indicated that the Claimant has been prescribed a "walker wheelchair"; however, the Claimant's physician recommended he ambulate with this device in order to increase circulation and prevent blood clots in his legs. Due to the size of his home, the Claimant cannot utilize a traditional wheelchair, but uses a "walker wheelchair" to assist in his ambulation. Testimony indicated that the Claimant cannot ambulate without assistance and requires the use of the "walker wheelchair" when ambulating outside the home. Ms. Howell assessed the Claimant as a Level 1, no wheelchair, and documented her findings concerning wheeling in the PAS as "[Claimant has walker that transforms into WC [wheelchair]. Uses

more on outings, does not use inside home on daily basis, states mainly uses walker as main mode of transport. Device does not have capability for member to push himself. States does not use inside home due to there not being enough room.” Ms. Howell testified that policy requires points to be awarded on the PAS for wheeling when the individual requires use of the wheeling device inside the home on a daily basis. Ms. Howell indicated that she could not award points for wheeling because the Claimant primary used the device for “outings”.

- 6) 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 July 18, 2012, the Claimant was awarded a total of 17 LOC points as part of his PAS, 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 reported during the assessment.
- 4) Policy requires that the maximum number of LOC points is awarded for dressing and grooming when the individual is assessed at a Level 3 or higher, meaning the individual requires total care in his or her functional ability. A review of evidence presented during the hearing process concludes that no additional points can be awarded to the PAS for dressing and grooming. During the assessment, the Claimant reported an ability to participate in his dressing and grooming; therefore, the WVMi nurse was correct in her assessment that the Claimant required physical assistance in the contested areas.
- 5) A review of evidence presented during the hearing process concludes that no additional points can be awarded to the PAS in the area of wheeling. During the assessment, the Claimant reported the use of wheeling assistance outside of the home and denied the use of wheelchair inside the home due to limited space. Because the PAS is an assessment of the Claimant’s functional ability inside the home, the nurse was correct in her assessment that the Claimant did not utilize a wheelchair in the home.
- 6) As a result of evidence presented during the hearing process, no additional points may be awarded to the Claimant’s PAS. The Claimant’s total points are 17. In accordance with existing policy, an individual with 17 points qualifies as a Level B LOC and is therefore eligible to receive a maximum of 93 homemaker service hours or a monthly budget amount of \$1379.62 under the personal options model.

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**