



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General

Earl Ray Tomblin
Governor

Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Rocco S. Fucillo
Cabinet Secretary

October 22, 2012

Dear Mr. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held October 19, 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 no longer meet the criteria to continue receiving 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 for Senior Services
Public Partnership, LLC

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

IN RE: ---- ,

Claimant,

v.

ACTION NO.: 12-BOR-1974

**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 October 19, 2012, by videoconference. 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 March 1, 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
----, Claimant's Representative
----, Claimant's Attorney-in-Fact
----, Claimant's Homemaker

Kay Ikerd, RN, Bureau for Senior Services (testified by phone)
Teena Testa, 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 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 February 14, 2012
- D-3 Notice of Decision dated February 28, 2012
- D-4 Pre-Admission Screening dated February 14, 2011

Claimants' Exhibits:

- C-1 Correspondence from ----, DO, dated September 2, 2012

VII. FINDINGS OF FACT:

- 1) Claimant was re-evaluated for medical eligibility for continued participation in the Aged/Disabled Waiver program on February 14, 2012. A Pre-Admission Screening (PAS)(D-2) was completed that date by Teena Testa, RN, with West Virginia Medical Institute (WVMI).

Claimant received twenty-two (22) points on the February 2012 PAS (D-2), which equates to a Level C care. A minimum of twenty-six (26) points is required to receive Level C care (D-1).

- 2) Claimant's representative, ----, stated the areas in contention on the February 2012 PAS were paralysis, arthritis, dysphagia, and contractures. Mr. ---- stated Claimant received points for these medical conditions on the February 2011 PAS, and as these medical conditions typically do not improve, Claimant should have been given points this year as well.

Mr. ---- referred to page 7 of 7 of the February 2012 PAS (D-2), which omitted information regarding the WVMI nurse's attempts to verify questionable diagnoses with Claimant's physician. Mr. ---- stated the WVMI nurse contacted Claimant's physician after the 2011 evaluation and confirmed diagnoses that were unavailable at the time of the assessment, as is documented on the February 2011 PAS (D-4). Mr. ---- presented a letter (C-1) from Claimant's physician, ----, DO, which reads in pertinent part:

This patient has multiple medical conditions that are as followed: IDDM [diabetes], Neurogenic Bladder, DJD [degenerative joint disease], DDD [degenerative disc disease], BPH [benign prostatic hyperplasia], Gout,

Hypertension, Hyperlipidemia, and Depression. He does have contractures, weakness, and spasticity of the lower extremities from Cerebral Palsy, and needs assistance with all activities of daily living.

- 3) Mr. ---- testified he has known Claimant for over thirty-five (35) years and his condition is deteriorating. Mr. ---- stated Claimant should receive maximum points for all activities of daily living. Mr. ---- contended there were numerous discrepancies found on the February 2012 PAS, diminishing the WVMi nurse's credibility. Mr. ---- stated the burden of proof regarding Claimant's level of care rests with WVMi.
- 4) ----, Claimant's homemaker, testified she has been Claimant's caregiver for four (4) years. Claimant requires the assistance of several people to transfer him into a vehicle. Ms. ---- stated he is usually transported by ambulance to doctors' appointments. Ms. ---- stated Claimant has problems with his hearing and cannot vacate his home in an emergency. Ms. ---- stated Claimant is bed-ridden and often in pain.
- 5) Claimant testified he cannot perform activities of daily living independently and his condition is deteriorating. Claimant stated he only takes sponge baths and has not showered in two (2) years. Claimant stated he is bed-ridden and unable to vacate independently. Claimant stated he is hard of hearing and he required three (3) people to assist him to the hearing.
- 6) Teena Testa, RN with WVMi, testified that in preparation of the hearing, she realized the fax she sent to Claimant's physician to verify diagnoses not listed on the Medical Necessity Evaluation Request form was never sent. Ms. Testa stated she had assumed Claimant's physician had never responded to the request, when in fact the physician did not receive it.
- 7) Pertinent parts of the February 2012 PAS (D-2) document:

Significant arthritis: Gout
Paralysis: No paralysis
Dysphagia: Does not puree his foods
Contractures: Left elbow
Hearing: Selective hearing. He notes he does have wax build up and has to have his ears cleaned out once every 4 months. I did not have to speak loud for the client to hear me.
- 8) 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

9) Aged/Disabled Waiver Services Policy Manual § 501.5.1.3(f) states:

Nurses shall not render medical diagnoses. In those cases where there is a medical diagnosis question, the decision shall be based on medical evidence presented by appropriate medical professionals.

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 22 points as the result of a PAS completed by WVMI in February 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 WVMI nurse cannot render a medical diagnosis. To receive points for a medical condition, a diagnosis from a physician or a prescription medication used to specifically treat a medical condition must be present. The medical conditions in contention were paralysis, arthritis, dysphagia and contractures. Based on the letter from Claimant's physician (C-1), contractures were confirmed and Claimant will receive one (1) point in that area. However, paralysis, dysphagia and arthritis were not confirmed and no additional points will be awarded.
- 3) Claimant was rated a Level 1 – not impaired – in hearing. The WVMI nurse documented that she did not have to raise her voice when interviewing Claimant to be heard. To receive points in hearing, Claimant would have to be rated a Level 3 – impaired/not correctable. The testimony presented failed to establish Claimant should have been evaluated as Level 3 and no additional points can be awarded.

- 4) Claimant received the maximum allowable points in the areas of grooming, bladder and bowel incontinence, transferring, walking and wheeling. Testimony and documentation indicated that Claimant participates to a degree in the areas of eating, bathing, grooming and medication administration. No additional points can be awarded on the February 2012 PAS.
- 5) Claimant was correctly evaluated 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 under the Aged/Disabled Waiver program to Level C care. One (1) additional point will be awarded for contractures.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 22nd day of October 2012

Kristi Logan
State Hearing Officer