



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

July 10, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 6, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker service hours in the Aged/Disabled Waiver Program due to a level of care determination.

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. Some of these regulations state that for the Aged/Disabled Waiver Program, individuals are evaluated by utilizing the Pre-Admission Screening (PAS) assessment tool to gauge their functioning abilities in the home. Points are assigned by the nurse based on the information derived from the PAS assessment interview, and the level of care is divided into four (4) categories of assistance. The individual's level of care is determined based on the points determined during the completion of the PAS assessment. (Aged and Disabled Waiver Manual Section 501)

The information provided during your hearing shows that you meet the medical requirements for Level of Care (C) in the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to reduce your level of care under the Aged/Disabled Waiver Program from Level (D) to Level (C).

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI / Public Partnerships, LLC

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-930

**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 was held by conference call and convened on July 6, 2012.

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 representative

Sara Birckhead, Department's representative
Courtenay Smith, Department's witness

Presiding at the hearing was Cheryl Henson, State Hearing Officer and member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in its proposal to reduce the Claimant's Level of Care benefits under the ADW Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Section 501

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Pertinent provisions of Aged/Disabled Waiver Policy Manual
- D-2 Pre-Admission Screening (PAS) assessment completed January 30, 2012
- D-3 Notice of Decision dated February 21, 2012

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing a required annual re-evaluation for the Title XIX ADW Program during the month of January 2012.
- 2) A West Virginia Medical Institute (WVMI) Registered Nurse (RN), Courtenay Smith, visited the Claimant in her home and completed her Pre-Admission Screening (PAS) medical assessment (D-2) on January 30, 2012. She determined that the Claimant continues to meet the medical requirements for the program; however, she assessed the Claimant at a reduced level from the previous determination - Level of Care (C) rather than Level (D). The Claimant received twenty-five (25) points during the PAS assessment, which places her in Level (C) care. For Level of Care (D), the Claimant would need at least twenty-six (26) points.
- 3) During the hearing, the WVMI nurse discussed her findings in each relevant category and explained her reasoning for rating the Claimant in each area.
- 4) The Claimant contends that she should also receive points in the assessed areas of angina with exertion, aphasia, and decubitus.

In the area of "angina with exertion," the nurse assessed the Claimant as reporting no chest pain and documented the following during the PAS assessment interview:

Member denies chest pain with rest or exertion. No [diagnosis] or [prescription medication] noted.

The Claimant's representative, -----, is the Claimant's daughter. She stated that the Claimant often complains of chest pain and holds her chest with her hand. She

confirmed that the Claimant does not take medication for angina, and stated that she wonders if the Claimant's chest pain may be from a hiatal hernia or heartburn.

In the area of "aphasia," the nurse assessed the Claimant as having no aphasia, and documented the following during the PAS assessment interview:

Member has difficulty expressing her thoughts with words frequently.
No [diagnosis] noted.

Ms. Smith testified that the Claimant communicated well during the PAS assessment. She added that she checked with the Claimant's physician and he did not confirm a diagnosis of aphasia for the Claimant. ----- stated that the Claimant often has difficulty speaking and will often say the wrong word. She added that the Claimant's physician is new and may not have been aware of her problem in this area.

In the area of "decubitis," the WVMi nurse assessed the Claimant as having no decubitus and documented the following during the PAS interview assessment:

Member denies decubitus ulcers.

----- stated that the Claimant has open sores on her legs and ankles from "bumping into things," and that her arms "rip open" and are often bandaged as a result. She added that the Claimant's physician has indicated this is because the Claimant has thin skin. Ms. Smith stated that the sores described by ----- are not decubitus ulcers, and explained that a decubitus ulcer is one that develops from the breaking of skin in bony prominences due to pressure from lack of mobility.

5) Aged/Disabled Home and Community-Based Services Manual Section 501.3 –
MEMBER ELIGIBILITY AND ENROLLMENT PROCESS:

Applicants for the ADW Program must meet the following criteria to be eligible for the program:

C. Be approved as medically eligible for NF Level of Care.

6) Aged/Disabled Home and Community-Based Services Manual Section 501.3.1.1 states in pertinent part:

Purpose: The purpose of the medical eligibility review is to ensure the following:

A. New applicants and existing clients are medically eligible based on current and accurate evaluations.

B. Each applicant/client determined to be medically eligible for ADW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term services needs.

C. The medical eligibility determination process is fair, equitable and consistently applied throughout the state.

7) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2.1 (D-1) LEVELS OF CARE CRITERIA states in pertinent part:

There are four levels of care for homemaker services. Points will be determined as follows, 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 given for j.

Wheeling

#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

Total number of points possible is 44

8) Aged/Disabled Home and Community Based Services Waiver Policy Manual 501.3.2.2 LEVELS OF CARE SERVICE LIMITS states:

Level	Points Required	Hours Per Day	Hours Per Month
A	5-9	2	62
B	10-17	3	93
C	18-25	4	124
D	26-44	5	155

The total number of hours may be used flexibly within the month, but must be justified and documented on the POC. Example: If the POC shows 4 hours/day, Monday-Thursday and 5 hours on Friday, the additional hour on Friday must be justified on the POC.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that there are four (4) levels of care for homemaker services. Points are determined based on the individual's medical condition and functional abilities at the time the PAS is completed. Points are assigned accordingly.
- 2) The Claimant was assessed at Level of Care (C) during her January 30, 2012 assessment having received twenty-five (25) points. To be assessed at Level of Care (D), the Claimant must be assigned at least twenty-six (26) points during the assessment.
- 3) Policy provides that, during the assessment process, the Department is to complete the PAS assessment by means of both observation and/or an interview process to determine the individual's functional ability in the home.
- 4) The Claimant disputed the Department's finding of no assessed point for angina with exertion. The Claimant denied angina issues during the PAS assessment, and ----- indicated that the Claimant's chest pain may be related to heartburn or a hiatal hernia. There is insufficient evidence to support the awarding of a point in this area.
- 5) The Claimant disputed the Department's finding of no assessed point for aphasia. The Claimant reported issues with speaking during the PAS assessment. The nurse attempted to confirm the diagnosis with the Claimant's physician since she found no prescription medication for this condition. The physician declined to confirm a diagnosis of aphasia for the Claimant. There is insufficient evidence presented to support the awarding of a point in this area.
- 6) The Claimant disputed the Department's finding of no assessed point for decubitus. ----- described the Claimant's sores on her arms and legs as resulting from bumping into things or from "thin skin." The WVMI nurse explained that a decubitus is a sore that is caused by the breaking of skin over a bony prominence due to pressure from lack of mobility. One (1) point is awarded for the Claimant's pain. There is insufficient evidence to support the awarding of a point in this area.
- 7) Based on the above, no additional points are awarded.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to reduce the Claimant's Level of Care from Level (D) to Level (C).

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 10th Day of July 2012.

**Cheryl Henson
State Hearing Officer**