



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

December 6, 2012

Dear Ms. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 20, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker service hours under the 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/Disabled Waiver Program is based on current policy and regulations. One of these regulations specifies that for the Aged/Disabled Waiver Program, 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 WVMI. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual 501.5.1.1)

Information submitted at the hearing reveals that your documented medical conditions confirm your Level of Care should continue to be a Level "D" rating. As a result, you remain eligible to receive 125-155 hours per month of homemaker services.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to decrease your Level of Care under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI

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

IN RE: ----,

Claimant,

v.

ACTION NO.: 12-BOR-2247

**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 the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened via videoconference on November 20, 2012, on a timely appeal submitted to the Department on July 18, 2012, and received by the Hearing Officer on October 2, 2012.

It should be noted that the Claimant's benefits have continued pending a hearing decision.

II. PROGRAM PURPOSE:

The 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 daughter/care provider
----, Case Manager, ----, Claimant's witness
----, Director of ----, ----, Claimant's witness
----, Claimant's witness
----, Claimant's witness

Kay Ikerd, RN, Bureau of Senior Services (participated telephonically)
Courtenay Smith, RN, West Virginia Medical Institute (participated telephonically)

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Section 501.5.1.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 501.5.1.1(a) and 501.5.1.1(b)
- D-2 Pre-Admission Screening (PAS) assessment completed on June 27, 2012
- D-3 Pre-Admission Screening (PAS) assessment completed on June 28, 2011
- D-4 Notice of Decision dated July 5, 2012
- D-5 Letter to ---- from APS Healthcare dated April 18, 2012, granting Level of Care increase to Level "D"

Claimant's Exhibits:

- C-1 Information from ----, D.P.M.

VII. FINDINGS OF FACT:

- 1) The Claimant, a recipient of Aged/Disabled Waiver (ADW) Medicaid benefits, underwent an annual reevaluation to verify continued medical eligibility and assign an appropriate Level of Care.
- 2) West Virginia Medical Institute (WVMI) Registered Nurse Courtenay Smith completed a Pre-Admission Screening (PAS) medical assessment (D-2) on June 27, 2012, and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 25 points for documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care "C" - eligible for 94-124 hours per month of homemaker services. It should be noted that the Claimant previously qualified for a Level of Care "D" - eligible for 125-

155 hours per month of homemaker services as the result of a request for an increase in Level of Care granted in April 2012 (D-5).

- 3) On July 5, 2012, the Department sent the Claimant a Notice of Decision (D-4), advising her of the proposed reduction in homemaker service hours.
- 4) The Claimant's witnesses contended that the Claimant should receive an additional point because she has an infected, open wound on her foot that is "eating into the bone." During the PAS, the WVM Nurse documented the Claimant's foot wound, but indicated that the Claimant denied the presence of a decubitus ulcer. The Claimant's witness indicated that confusion had arisen because one physician had diagnosed the area as a decubitus ulcer, but another medical provider had assigned it another diagnosis.

The hearing record was left open until December 10, 2012, so that the Claimant could provide clarification of the diagnosis. On November 30, 2012, the Claimant provided Exhibit C-1, diagnostic information from ----, D.P.M., concerning the open wound. This document states, "Chronic diabetic ulcer L. foot, decubitus; needs to be non-wt. bearing."

Based on this diagnosis, the Claimant is awarded one (1) additional point for decubitus.

The Claimant's witnesses contested additional functional areas, including bowel incontinence and orientation; however, addressing those potential deficits would be moot, since the awarding of one (1) additional point for decubitus elevates the Claimant to a Level "D" Level of Care.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Sections 501.5.1.1(a) and 501.5.1.1(b) (D-1): There will be 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- Decubitis- 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
- #34- 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.
- 2) The Claimant was awarded 25 points as the result of a PAS completed by WVMi in June 2012 in conjunction with her annual medical evaluation.
- 3) As a result of information presented during the hearing, one (1) additional point is awarded for decubitus.
- 4) The Claimant's total number of points is elevated to 26, rendering her eligible to receive a Level "D" Level of Care.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled, Title XIX (HCB) Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 6th Day of December 2012.

Pamela L. Hinzman
State Hearing Officer