



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

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

January 27, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held December 21, 2011. 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 C to Level B 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 provide 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 C care.

It is the decision of the State Hearing Officer to **Uphold** the proposal of the Department to reduce your homemaker hours to Level B care.

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Bureau of Senior Services
West Virginia Medical Institute
Right at Home

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

IN RE: -----,

Claimant

v.

ACTION NO.: 11-BOR-2326

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondents

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on December 21, 2011 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 on a timely appeal, filed October 27, 2011.

It should be noted here that the Claimant's benefits under the Aged/Disabled Waiver program have continued at Level C care pending a decision.

II. PROGRAM PURPOSE:

The program entitled Aged/Disabled Waiver (ADW) is administered by the West Virginia Department of Health and Human Resources.

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

-----, Witness for Claimant

-----, Homemaker, Right at Home

-----, Case Manager, Right at Home
-----, Homemaker RN, Right at Home

Kay Ikerd, RN, Bureau of Senior Services
-----, RN, West Virginia Medical Institute

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 October 3, 2011
- D-3 Pre-Admission Screening dated September 14, 2010
- D-4 Notice of Decision dated October 10, 2011

VII. FINDINGS OF FACT:

- 1) Claimant was reevaluated for medical eligibility for the ADW program on October 3, 2011. A Pre-Admission Screening (PAS) was completed that date by -----, RN with the West Virginia Medical Institute (WVMI) (D-2).

Claimant received 16 points on the October 2011 PAS, reducing her level of care from Level C to Level B (D-4).

- 2) Kay Ikerd, RN with the Bureau of Senior Services presented Claimant's PAS from 2010. Claimant received a level 3 in bathing, a level 2 in bowel incontinence, a level 3 in orientation and a level 3 in transferring. Claimant received points from these areas on the 2010 PAS that she did not receive on the 2011 PAS (D-3).

- 3) -----, Claimant's nephew testified Claimant's mobility has deteriorated in the past year and she has difficulty going on outings as she used to. ----- stated Claimant uses furniture to hold onto when walking. ----- stated Claimant will stumble back and fall and is dead weight during these times. ----- testified that he did not fully understand the WVMI nurse's questions about Claimant's ability to walk independently regarding physical assistance and supervision.

----- stated Claimant has bowel incontinence and has accidents. He stated Claimant will not go to the bathroom and will tell him after she has had an accident on herself. ----- stated the bowel accidents do not occur daily.

----- stated Claimant does not communicate and he has no idea what he needs are. He can only tell if something may be wrong with Claimant if her behaviors change.

- 4) Pertinent parts of the October 2011 PAS read (D-2):

Mem[ber] is seated on end of couch, with others in living room. She is alert, looking around room, pointing, and mumbling sounds. She responds at times to being spoken to, opening hands for me, and throwing paper in trash at HM's request, all other times during visit, she continues to point and mumble.

Bathing: HM reports assisting mem[ber] into tub to sit on chair. She reports mem[ber] will wash her face and private areas – nephew reports she does not allow anyone else to bathe her private areas. HM washes all other areas.

Continence: Nephew reports urinary incontinence during night at 2x wk, currently none for 2 wks; he reports use of pads on bed regularly. Nephew and HM deny bowel incontinence.

Orientation: Mem[ber] demonstrates orientation to place, walking to areas of home as desired, such as bathroom and refrigerator; she does not verbalize who others are in room when asked; she is up in home frequently during nights.

Transferring: Observed mem[ber] rise from couch by pushing off seat using her hands, and leaning forward. Nephew reports she manages bed transfers in same manner.

- 5) 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- 2 hours per day or 62 hours per month
- Level B- 10 points to 17 points- 3 hours per day or 93 hours per month
- Level C- 18 points to 25 points- 4 hours per day or 124 hours per month
- Level D- 26 points to 44 points- 5 hours per day or 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 16 points as the result of a PAS completed by WVMi in October 2011 in conjunction with her annual medical evaluation.
- 2) Claimant is able to participate in bathing, with assistance from her homemaker. Claimant does not require total bathing by others and was correctly rated as a level 2 for physical assistance. No additional points can be awarded in this area.
- 3) Claimant's homemaker and nephew denied bowel incontinence to the WVMi nurse during the assessment. The WVMi nurse observed Claimant transferring with the assistance of furniture and there was no information given regarding Claimant's need for physical assistance in transferring. The WVMi nurse evaluated Claimant as having no bowel incontinence and as a level 2 in transferring based on the information she was provided. No additional points can be given in these areas.
- 4) Claimant was able to follow directions during the medical assessment. Claimant showed some awareness to her surroundings during the assessment and therefore could not be considered totally disoriented. No additional points can be awarded in this area.

- 5) Based on the information provided, Claimant no longer meets the medical criteria to continue receiving 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 B care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 27th day of January 2012

Kristi Logan
State Hearing Officer