



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

Earl Ray Tomblin
Governor

Board of Review
P.O. Box 1736
Romney, WV 26757

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

February 7, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held February 7, 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 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 Level of Care should be reduced from a level "D" to a level "C" Level of Care.

It is the decision of the State Hearing Officer to Uphold the action of the Department to reduce your homemaker service hours under the Medicaid Aged/Disabled (HCB) Title XIX Waiver Services program.

Sincerely,

Eric Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Kay Ikerd, Bureau of Senior Services
[REDACTED] County Action Group, Inc.

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-2561

**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 on a timely appeal, filed November 23, 2011.

It should be noted here that the Claimant's benefits under the Aged and Disabled Waiver program continue at the previous level of determinate 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

-----, Claimant's daughter

-----, Claimant's Homemaker Aide- [REDACTED] County Action Group, Inc.

Cecelia Brown, Quality Assurance Director-Bureau of Senior Services (BoSS)

Kim Sang, RN-West Virginia Medical Institute (WVMI)

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 Pre-Admission Screening Assessment dated November 7, 2011
- D-3 Notice of Decision dated November 9, 2011

VII. FINDINGS OF FACT:

- 1) On November 7, 2011, the Claimant was medically assessed to determine her continued eligibility and to assign an appropriate Level of Care, hereinafter LOC, in participation with the Aged and Disabled Waiver program. Prior to the re-evaluation, the Claimant was assessed at a Level "D" LOC under the program guidelines.
- 2) On November 9, 2011, the Claimant was issued a Notice of Decision, Exhibit D-3. This exhibit noted that the Claimant had been determined medically eligible to continue to receive in-home services under the program guidelines, but her corresponding level of care could not exceed 124 hours per month (LOC "C" determination).
- 3) Ms. Kim Sang, West Virginia Medical Institute (WVMI) assessing nurse completed Exhibit D-2, the Pre-Admission Screening assessment, hereinafter PAS, as part of her medical assessment of the Claimant. Ms. Sang testified that the Claimant was awarded a total of 18 points during the evaluation, which qualifies for a Level "C" LOC.
- 4) The Claimant's representative contend that additional points should have been awarded in the areas of the diagnosis of contractures and dementia, as well as, total care in bathing, dressing, and grooming. The following addresses the contested areas:

Diagnosis of Contractures-Ms. Sang documented in the PAS assessment that the Claimant's toes overlap each other and she cannot straighten them out. Ms. Sang testified that

she attempted to verify the Claimant's diagnosis of contractures, but was informed of the Claimant's diagnosis of a bunion on the foot, but no diagnosis of contractures. Ms. Sang purported that points can only be awarded in the area of Medical Conditions and Symptoms with a verified diagnosis from the physician. The Claimant's representatives indicated that the Claimant does have contractures which inhibit her ability to ambulate and have resulted in numerous falls.

The assessing nurse attempted to verify the Claimant's diagnosis of contractures with her physician and was not informed of any present diagnosis in the contested area. Since the diagnosis in question was not verified by the Claimant's physician, an additional point in the contested area cannot be awarded.

Diagnosis of Dementia-The Claimant's representatives testified that the Claimant does have a diagnosis of dementia and she has been prescribed three different medications for this diagnosis. Ms. Sang testified that because the Medical Necessity Evaluation Request submitted by the Claimant's physician did not reveal a diagnosis of Alzheimer's, multi-infarct, senile dementia or a related condition, she could not award a point toward the Claimant's Level of Care.

There was no information related during the assessment that the Claimant suffered from a diagnosis of dementia or any related condition. Testimony revealed that information related from the Claimant's physician failed to establish a diagnosis of dementia; therefore, an additional point cannot be awarded in the contested area.

Total care in bathing, dressing, and grooming-Testimony from the Claimant's representatives revealed that the Claimant's abilities in the contested areas of bathing, dressing, and grooming have regressed since the administered assessment and the Claimant now requires total care in each of the contested areas.

Information disclosed during the assessment revealed that the Claimant had the ability to participate in the areas of bathing, dressing, and grooming and was assessed at a Level 2, requiring physical assistance. The assessing nurse can only determine her assessment on information disclosed at the time of the assessment and testimony concerning the Claimant's most recent condition and regression of abilities cannot be considered in the State Hearing Officer's decision. Therefore, the assessing nurse correctly assessed the Claimant based on her ability to participate in the contested areas and additional points cannot be awarded in the contested areas.

- 5) 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 Level of Care (LOC) is determined by the number of points awarded on the Pre-Admission Screening (PAS) assessment tool.
- 2) On November 7, 2011, the Claimant was assessed a total of 18 points as part of her PAS assessment completed by West Virginia Medical Institute.
- 3) As a result of evidence and testimony presented during the hearing process, no additional points may be awarded. The Claimant's total points remain at 18.
- 4) In accordance with existing policy, an individual with 18 points qualifies as a Level "C" LOC and is therefore eligible to receive a maximum of 124 monthly hours of homemaker services.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold 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 _____ day of February , 2012.

Eric L. Phillips
State Hearing Officer