



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

February 2, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held January 26, 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 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 WVMi (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 medical 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 of Senior Services
West Virginia Medical Institute

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

IN RE: -----,

Claimant

v.

ACTION NO.: 11-BOR-2548

**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 January 26, 2012 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 31, 2011.

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 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:

-----, Attorney in Fact for Claimant

-----, Homemaker

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

Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the Board of Review.

All participants testified by phone.

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 10, 2011
- D-3 Pre-Admission Screening dated September 8, 2010
- D-4 Notice of Decision dated October 18, 2011

VII. FINDINGS OF FACT:

- 1) Claimant was reevaluated for medical eligibility for the ADW program on October 10, 2011. A Pre-Admission Screening (PAS) was completed that date by Brenda Myers, RN with the West Virginia Medical Institute (WVMI) (D-2).

Claimant received 24 points on the October 2011 PAS, reducing his level of care from Level D to Level C (D-4).

- 2) -----, Claimant's homemaker, stated Claimant has shortness of breath and takes breathing treatments. ----- stated Claimant has had bed sores for years that require skin care. ----- stated Claimant now has bowel incontinence due to having colitis and has contractures of the right leg. Claimant cannot get out of bed and obviously requires constant and total care.

----- testified Claimant's husband cannot hear well and misunderstood the medical terms used by the WVMI nurse. ----- was supposed to be notified of the assessment so she could be present. ----- stated the WVMI nurse came a

day earlier than was scheduled, and she arrived late. ----- stated she heard Claimant's husband giving the incorrect information to the nurse that day.

3) -----, Claimant's husband, testified Claimant has had bed sores for years. (b)(6) stated Claimant requires total care which he is unable to provide himself.

4) Brenda Myers, RN with WVMi testified to the PAS she completed in October 2011 for Claimant. Ms. Myers stated she was advised that Claimant did not have bed sores or dyspnea. ----- told Ms. Myers that Claimant's bowel accidents occurred once a month and even reported improvement with her bowel movements. Ms. Myers stated she requested verification of diagnoses for dysphagia, aphasia and dyspnea with no response from Claimant's physician.

Ms. Myers stated she was unaware that she was to notify ----- of the assessment as Claimant's husband is Claimant's legal representative. Ms. Myers stated when she asks an individual about medical conditions, she will explain the definition of a medical term or condition.

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 24 points as the result of a PAS completed by WVMi in October 2011 in conjunction with her annual medical evaluation.
- 2) Testimony indicated Claimant had several diagnoses for which she was not awarded points for. The WVMi nurse cannot diagnose a medical condition and award a point for a condition based solely on the individual's statement or without a prescription medication for the condition. The WVMi nurse attempted to verify diagnoses of dyspnea, dysphagia and aphasia with no response from Claimant's physician. Points cannot be awarded for these medical conditions.
- 3) The WVMi nurse evaluated Claimant based on the information that was made known to her at the time of the assessment. The WVMi nurse was advised of occasional bowel incontinence for Claimant and her representatives denied decubitus. Claimant was correctly assessed as requiring Level C care based on the information provided during the medical assessment in October 2011.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to reduce Claimant's homemaker hours from Level D to Level C care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 2nd day of February 2012

Kristi Logan
State Hearing Officer