



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

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

Earl Ray Tomblin
Governor

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

April 2, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held March 29, 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 L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Kay Ikerd, RN, Bureau of Senior Services

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

IN RE: ---- ----,

Claimant,

v.

ACTION NO.: 11-BOR-2618

**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 December 16, 2011.

It should be noted that the Claimant's benefits under the Aged and Disabled Waiver program continue at the previous level of determination 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's Attorney-In-Fact

Kay Ikerd, RN-Bureau of Senior Services (BoSS)

Lee Ann Beihl, 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 dated September 27, 2011
- D-3 Notice of Decision dated October 3, 2011
- D-4 Pre-Admission Screening dated June 22, 2010

VII. FINDINGS OF FACT:

- 1) On September 27, 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 October 3, 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. Lee Ann Beihl, 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. Beihl testified that the Claimant was awarded a total of 21 points during the evaluation, which qualifies for a Level "C" LOC.
- 4) ---- ----, the Claimant's Attorney-In-Fact contends that additional points should have been awarded in the areas of wheeling, arthritis/dyshagia and dressing.

The following addresses the contested areas:

Wheeling- ---- ---- indicated that her aunt's mobility is deteriorating and she requires wheeling assistance to be transferred to different areas of her home. Additionally, ---- ---- provided testimony concerning the Claimant's mobility outside the home. ---- ---- testified that during the assessment she was informed that the Claimant did not utilize a wheelchair inside the home. Ms. Beihl added that her assessment is based on the Claimant's abilities inside the home and she could not consider the Claimant's mobility outside of the home.

Policy requires that points are awarded in the area of wheeling when the individual requires assistance inside the home. During the assessment, neither the Claimant nor her representatives indicated that the Claimant requires assistance with wheeling inside the home. The matter before the Board of Review is whether or not the assessing nurse correctly assessed the Claimant based on information known at the time of the assessment. Because there was no indication during the assessment that the Claimant required wheeling assistance inside the home, the assessing nurse correctly assessed the Claimant and an additional point in the contested area cannot be awarded.

Arthritis/Dyshagia----- ---- indicated that the Claimant has decreased strength in her hands due to an arthritic condition. Ms. Beihl stated that in order to be awarded a point in the area of Medical Conditions and Symptoms, the individual must have a physician's diagnosis or a prescribed medication that supports the diagnosis. Ms. Beihl indicated that the Claimant did not have a diagnosis of arthritis or dysphagia and was not taking any prescribed medications for the contested diagnosis.

Policy requires that assessing nurses cannot render a medical diagnosis. When a medical diagnosis is questioned, the decision must be based on medical evidence presented by the appropriate medical professionals. Because there were no diagnoses or prescribed medications for arthritis and dysphagia, the assessment of the Claimant's medical conditions and symptoms was correct and additional points in the contested area cannot be awarded.

Dressing----- ---- indicated that the Claimant requires assistance in dressing because she is unable to lift her hands above her head. Ms. Beihl assessed the Claimant as a Level 2 requiring physical assistance and documented her findings of the Claimant's functional ability of dressing in the assessment as, "requires assistance with upper and lower body clothing; demonstrated inability to raise arms past shoulder height; family states she is able to cross her legs. She needs assistance with shoes and socks."

Policy requires that the maximum number of points concerning the individual's functional abilities is awarded when the individual is assessed at a Level 3 or higher, meaning that the individual requires total care. Testimony indicated that the Claimant had difficulties raising her arms in order to participate in the functional area. Information related during the assessment revealed that the Claimant required assistance with upper and lower body clothing, her inability to raise her arms and her requirement for assistance with shoes and socks. There was no indication during the assessment that the Claimant could participate in the functional ability of dressing; therefore, the Claimant requires total care in the area of dressing and an additional point can be awarded in the area of dressing.

- 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

- 6) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.5.1.3 F documents:

Nurses shall not render medical diagnoses. In those cases where there is a medical diagnosis question, the decision shall be based on medical evidence presented by appropriate medical professionals.

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 September 27, 2011, the Claimant was assessed a total of 21 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, one additional point may be awarded. Therefore, the Claimant shall receive 22 total points.
- 4) In accordance with existing policy, an individual with 22 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 April , 2012.

Eric L. Phillips
State Hearing Officer