



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

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

March 30, 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 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 WVM. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual 501.5.1.1)

Information submitted at your hearing reveals that you continue to require the degree of care and services necessary to qualify medically for the Aged/Disabled Waiver Program and your documented medical conditions confirm that your Level of Care should be a Level "D" rating. As a result, you are eligible to receive five (5) hours per day or 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
WVM
Quality Care Management, LLC

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-692

**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 March 29, 2012 on a timely appeal filed February 14, 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
-----, RN, Panhandle Support Services
-----, In-Home Care Provider, Panhandle Support Services
Angel Khosa, Licensed Social Worker, Bureau of Senior Services
-----, RN, West Virginia Medical Institute

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 January 31, 2012
- D-3 Pre-Admission Screening (PAS) assessment completed on December 17, 2010
- D-4 Notice of Decision dated February 3, 2012
- D-5 Notice of Decision for Level of Care Change dated February 11, 2011

Claimant's Exhibits:

- C-1 Information from Jeffrey Harris, D.O., dated March 28, 2012
- C-2 Information from Richard Topping, M.D., dated March 28, 2012

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 Barbara Plum completed a Pre-Admission Screening (PAS) medical assessment (D-2) on January 31, 2012 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 24 points for documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care "C" - eligible for four (4) hours per day or 124 hours per month of homemaker services. It should be noted that the Claimant previously qualified for a Level of Care "D" - eligible for five (5) hours per day or 155 hours per month of homemaker services - as a result of a Level of Care Change in February 2011 (D-5).

3) The Claimant was sent notification on February 3, 2012 (D-4) advising her of the proposed reduction in homemaker service hours.

4) During the hearing, -----, Registered Nurse with [REDACTED] Services, provided Exhibits C-1 and C-2, physician verification of the diagnoses of dysphagia and contracture. Notes recorded on the January 31, 2012 PAS indicate that the Claimant reported her ability to swallow was getting worse and that she has to drink beverages to assist with the swallowing of foods. The WVM Nurse recorded that she had no physician diagnoses for dysphagia or contracture at the time of the PAS, but she indicated under Section 23e of the PAS (paralysis) that the Claimant has a diagnosis of "right foot drop with brace on referral." It should be noted that the Claimant was awarded one (1) point for contractures on the December 17, 2010 PAS (D-3).

-----, In-Home Care Provider with [REDACTED] Services, indicated that the Claimant requires total care with grooming, as she must brush the Claimant's teeth at times. In addition, ----- testified that she must put medication directly into the Claimant's mouth at times. It should be noted that the Claimant was rated as needing physical assistance with grooming on the January 2012 PAS because she reported the ability to comb her hair at times and brush her teeth with her right hand. She was rated as requiring prompting/supervision with medication administration because the care provider filled her pill box and handed her medications to take.

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- 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.
- 2) The Claimant was awarded 24 points as the result of a PAS completed by WVMI in January 2012 in conjunction with her annual medical evaluation.
- 3) As a result of information presented during the hearing, two (2) additional points are awarded to the Claimant for the diagnoses of dysphagia and contracture. The Claimant provided physician diagnoses for these conditions which are consistent with information obtained during the January 2012 PAS. No additional points can be awarded in the areas of total care with grooming and inability to administer medications because information gathered during the PAS indicated that the Claimant could participate in these activities to a limited degree.
- 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 30th Day of March, 2012.

Pamela L. Hinzman
State Hearing Officer