



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Earl Ray Tomblin
Governor

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

February 18, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 2, 2011. Your hearing request was based on the Department of Health and Human Resources' reduction of your homemaker service hours in the Aged/Disabled Waiver Program due to a level of care determination.

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. Some of these regulations state that for the Aged/Disabled Waiver Program individuals are evaluated by utilizing the Pre-Admission Screening (PAS) tool to assess their functioning abilities in the home. Points are assigned by the nurse based on the information derived from the PAS assessment interview, and the level of care is divided into four categories of assistance. The individual's level of care is determined based on the points assessed during the completion of the PAS. (Aged and Disabled Waiver Manual Section 501)

The information provided during your hearing shows that you continue to meet the medical requirements for Level of Care (C) in the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to reduce your level of care under the Aged/Disabled Waiver Program.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI



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

-----,

Claimant,

v.

Action Number: 10-BOR-2104

**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 February 2, 2011 on a timely appeal filed September 21, 2010.

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
-----, Claimant's witness
-----, Claimant's witness

Kay Ikerd, Bureau of Senior Services, Department representative
Stacy Leadman, Department's witness

It should be noted that the Department participated telephonically.

Presiding at the hearing was Cheryl Henson, State Hearing Officer and 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 Level of Care benefits under the Aged/Disabled Home and Community-Based Waiver Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 501

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 501, two (2) pages
- D-2 Pre-Admission Screening (PAS) assessment completed September 10, 2010, nine (9) pages
- D-3 Notice of Decision dated September 13, 2010

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing a required annual re-evaluation for the Title XIX Aged/Disabled Waiver Program during the month of September 2010.
- 2) A West Virginia Medical Institute (WVMI) registered nurse, Paula Clark, visited the Claimant at his home and completed his Pre-Admission Screening (PAS) medical assessment (D-2) on September 10, 2010. She determined that the Claimant continues to meet the medical requirements for the program. However, he was assessed at a reduced level from the previous determination; Level of Care (B) rather than Level (C). The Claimant received fifteen (15) points during the PAS assessment, which places him in Level (B) care. For Level of Care (C), the Claimant would need at least eighteen (18) points.
- 3) The WVMI nurse who completed the Claimant's PAS assessment, Paula Clark, was not available for the hearing; therefore, the Claimant was afforded the opportunity to proffer testimony in this regard. Another nurse employed with WVMI, Stacy Leadman, participated in the hearing in order to explain the nurse's findings during the assessment based on the information -----documented during her evaluation.
- 4) The Claimant contends that additional points should be awarded for the areas of pain, bowel incontinence, walking, and transferring. Each area is addressed separately below:

Pain

The Department stipulated during the hearing that the Claimant's PAS assessment contains enough information to allow an award for pain; therefore, one (1) point is found for the Claimant's pain.

Bowel Incontinence

The Claimant was assessed as being "continent" during his assessment and no points were awarded. The Claimant contends that he should be rated as "occasionally incontinent" because he has bowel accidents two (2) to three (3) times per week. The category assessment for occasional incontinence in the area of bowel incontinence would allow for the award of one (1) point. He testified that, when asked by the nurse about bowel incontinence during his assessment, he reported that he had no bowel incontinence out of embarrassment. The Claimant's homemaker, -----, cares for the Claimant regularly. She testified that sometime around October 2010 she began to notice that the Claimant was having accidents with his bowels and she began doing his laundry at that time. She stated that she notice he was changing clothes a lot beginning in September 2010. She added that she encouraged him to start wearing pads for the bowel incontinence, and he began wearing them at some time around October 2010. She testified that she has been the Claimant's homemaker since August 2010.

The WVMi nurse, during the September 2010 PAS assessment, recorded the following on the PAS:

I explained the reason for my visit, the Waiver program, and the handouts. I explained that the PAS determines 2 things: (1) if the member meets criteria to be on the program and (2) if the criteria is [sic] met, it determines the amount of time the member qualifies for care. I also discussed the importance of giving accurate information and that I understood that some of the information discussed may be embarrassing [sic] to the member.

Member reports he has accidents with his bladder every day but states he does not wear pulls ups [sic] or pads. Member denies having accidents with his bowels.

Walking

The Claimant was assessed as walking "independently" and did not receive any points for this assessment. The Claimant contends he should be assessed as needing a "supervised/assistive device" for walking because he often utilizes a cane to walk around his apartment. The category assessment for supervised/assistive device in the area of walking would allow the award of one (1) point. The Claimant testified that his feet "bother him real bad". He added that the nurse did not ask him if he ever had to use his cane and walker to get around his home. There is no documentation on the PAS that the Claimant was asked about his functional ability in this area.

The Department contends the PAS assessment (D-2) clearly shows the Claimant was rated correctly in this area.

The Claimant's homemaker testified that during "bad" days the Claimant must use his cane to get around his home. At times he just sits in his chair and can't get up. She added that at times he can't walk very well. She also added that the nurse did not ask her about the Claimant's normal functioning in regard to walking.

The WVMi nurse, during the September 2010 PAS assessment, recorded the following pertinent information on the PAS:

Member demonstrated he is able to walk in his apt (apartment). Member was slow and steady with walking. Member did not hold to furniture or walls to ambulate. Member did not use a cane or walker. Member reports he has a cane and a walker. Member reports he sometimes climbs on chairs to get things from up high. Member reports this is a pretty good day for him today.

Ms. Leadman testified that normally the WVMi nurses consider how an individual functions on "bad" days when assessing functional abilities, as well as also observing how they function on the day of the assessment. Nurses then assess the whole picture based on all the collected information.

Transferring

The Claimant was rated as needing a "supervised/assistive device" and received one (1) point in this area. The Claimant contends that he requires "one-person assistance" for transferring and should be assessed as such. The category assessment for "one-person assistance" for transferring allows for two (2) points to be awarded; therefore, the Claimant contends that an additional one (1) point should be awarded for transferring.

The Claimant's homemaker testified that, depending on the rate of pain the Claimant is having, she can gauge how he is going to function daily with walking and transferring based on how he shifts his body when he first gets up from bed. She added that if he sits in a chair for more than a few hours she must physically help him out of the chair. She testified that this usually happens daily. She testified that the nurse never asked the Claimant to describe how he normally functions in this area.

The Claimant testified that he can sometimes get out of his wheelchair by pushing off furniture. He acknowledged that he is home two (2) days per week by himself, and testified that there have been times when he was unable to get out of his chair on those days. He stated that on those days he called from his cell phone and his neighbors came and physically helped him out of his chair.

The WVMi nurse, during the September 2010 PAS assessment, recorded the following pertinent information on the PAS:

Member demonstrated he is able to stand by pushing to the arms of his w/c [wheelchair] to stand. Member was steady with steady [sic] with standing. Member reports this is a pretty good day for him today. Member reports his health has worsened over the past year d/t [due to]

not being able to do the things he is used to doing. Member's grips are fair bilaterally. Member was able to raise his arms to his head but c/o [complains of] pain. Member was able to reach with his right arm to his right side and with his left arm to his left side. Member was able to sit in his power w/c [wheelchair] and reach down to his mid shins. Member was not able to cross his legs at the ankles or the knees. Member was not able to rest either leg on the other knee.

5) Aged/Disabled Home and Community-Based Services Manual Section 501.3 –
MEMBER ELIGIBILITY AND ENROLLMENT PROCESS:

Applicants for the ADW Program must meet the following criteria to be eligible for the program:

C. Be approved as medically eligible for NF Level of Care.

6) Aged/Disabled Home and Community-Based Services Manual Section 501.3.1.1 states in pertinent part:

Purpose: The purpose of the medical eligibility review is to ensure the following:

A. New applicants and existing clients are medically eligible based on current and accurate evaluations.

B. Each applicant/client determined to be medically eligible for ADW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term services needs.

C. The medical eligibility determination process is fair, equitable and consistently applied throughout the state.

7) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2.1 (D-1) LEVELS OF CARE CRITERIA states in pertinent part:

There are four levels of care for homemaker services. Points will be determined as follows, 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 given for j.

Wheeling

#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
- Total number of points possible is 44

8) Aged/Disabled Home and Community Based Services Waiver Policy Manual
501.3.2.2 LEVELS OF CARE SERVICE LIMITS states:

Level	Points Required	Hours Per Day	Hours Per Month
A	5-9	2	62
B	10-17	3	93
C	18-25	4	124
D	26-44	5	155

The total number of hours may be used flexibly within the month, but must be justified and documented on the POC. Example: If the POC shows 4 hours/day, Monday-Thursday and 5 hours on Friday, the additional hour on Friday must be justified on the POC.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that there are four levels of care for homemaker services. Points are determined based on the individual’s medical condition and functional abilities at the time the PAS is completed. Points are assigned accordingly.
- 2) The Claimant was assessed at Level of Care (B) during his September 10, 2010 assessment, having received fifteen (15) points. To be assessed at Level of Care (C) the Claimant must be assigned at least eighteen (18) points during the assessment.
- 3) The Department stipulated during the hearing that the evidence supports the award of one (1) point for the Claimant’s condition of “pain”.
- 4) The totality of the testimony and evidence provided during this hearing support that the Claimant also requires supervision and/or an assistive device for walking, and requires one-person assistance for transferring. As such, an additional one (1) point is awarded for walking, and an additional one (1) point is awarded for transferring, for a total of two (2) additional awarded points in these areas.
- 5) Testimony from the Claimant and his witnesses support that he requires a cane for assistance at times for walking, and that he requires one-person assistance at times for transferring. There is insufficient evidence to support that the WVMI nurse asked the Claimant to describe his usual functioning abilities, including how he functions on his bad days, in these areas during the assessment. The nurse’s documentation in these areas speaks only to what she observed the day of the assessment, and it is clearly documented on the PAS that the Claimant was “having a good day” on that date. It is reasonable to consider that when evaluating an individual’s functional abilities, it would be necessary to not only document observations, but to also gather information and evaluate how an individual functions at all times, in order to make an accurate assessment of functional ability. Testimony and evidence reveals that the WVMI nurse did not do that in these areas.

- 6) The evidence does not support an award for additional points in the area of bowel incontinence. The Claimant clearly denied any bowel incontinence during the assessment, and the evidence and testimony provided during the hearing is not sufficient to support an award of points in this area.
- 7) A total of three (3) additional points are awarded as a result of this hearing. The additional three (3) points, when added to the Claimant's already awarded fifteen (15) points, bring the Claimant's total awarded points to eighteen (18), which supports Level of Care (C). The Department was not correct in its decision to reduce the Claimant's Level of Care from Level (C) to Level (B).

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to reduce the Claimant's Level of Care from Level (C) to Level (B).

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 18th Day of February, 2011.

**Cheryl Henson
State Hearing Officer**