



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 E. Third Avenue
Williamson, WV 25661

Earl Ray Tomblin
Governor

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

December 15, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held December 14, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to reduce your level of care hours from Level "D" to Level "C."

In arriving at a decision, the State Hearings 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 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 Waiver Policy and Procedures Manual § 501.3).

The information submitted at this hearing revealed that you meet the medical criteria required for Level "C" care.

It is the decision of the State Hearings Officer to **Uphold** the proposal of the Department to reduce your homemaker service hours under the Aged and Disabled Waiver Program to Level "C."

Sincerely,

Stephen M. Baisden
State Hearings Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Kay Ikerd, RN, WV Bureau of Senior Services
[REDACTED]

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

IN RE: -----

Claimant,

v.

ACTION NO: 11-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 concluded on December 15, 2011 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 by telephone conference call on December 14, 2011, on a timely appeal filed September 16, 2011. This hearing was originally scheduled for November 9, 2011, but was rescheduled at the Department's request.

II. PROGRAM PURPOSE:

The Program entitled Aged/Disabled Waiver (ADW) is administered by the West Virginia Department of Health & Human Resources.

The ADW Program is defined as a long-term care alternative that provides services which 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 and daughter

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
Kathy Gue, RN, West Virginia Medical Institute (WVMI), Department's Witness

Presiding at the Hearing was Stephen M. Baisden, State Hearing Examiner and a member of the Board of Review.

The Hearing Examiner placed all participants under oath at the beginning of the hearing.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether or not the Department was correct in the decision to reduce Claimant's homemaker hours from a Level "D" to a Level "C."

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Waiver Policy Manual, chapter 501.3.2.1 and chapter 501.3.2.2.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community Based Services Waiver Policy Manual Chapter 501.3.2.1 and 501.3.2.2
- D-2 Pre-Admission Screening (PAS) Form dated August 29, 2011
- D-3 Notice of Decision dated September 1, 2011

VII. FINDINGS OF FACT:

- 1) Department's representative entered into the record the applicable policy for this hearing. (Exhibit D-1.) Aged/Disabled Home and Community Based Waiver Policy Manual Chapter 501.3.2.1 and 501.3.2.2 states:

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
- #35- Prognosis- 1 point if terminal

Total number of points possible 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

Aged/Disabled Home and Community Based Waiver Policy Manual Chapter 501.3.3.1 (e) states in part:

When the home visit is made, the QIO RN, through observation and/or interview process, completes the PAS (Attachment 14). The RN will record observations and findings regarding the applicant's level of function in the home. RNs do not render medical diagnoses. In those cases where there is a medical diagnosis question, the QIO RN will attempt to clarify the information with the referring physician. In the event that the RN cannot obtain the information, he/she will document such, noting that supporting documentation from the referring physician was not received.

- 2) Department's witness testified that she conducted a Pre-Admission Screening (PAS) for the Aged and Disabled Waiver Services (ADW) program with Claimant on August 29, 2011. (Exhibit D-2.) On the section of the PAS labeled "Physician Recommendation," the document lists Claimant's primary diagnosis as "Severe DDD [Degenerative Disc Disease] back, septal defect." Claimant was awarded a total of 24 points on the PAS and was approved for Level C of care. WVMi reported its findings to Claimant in a Notice of Decision dated September 1, 2011. (Exhibit D-3.)

- 3) Claimant asserted that she should have received two more points on her PAS. She stated she should have received these additional points on item #23, Medical Conditions/Symptoms, (f) dysphagia, and item #26, Functional Abilities, (g) orientation.

Dysphagia – According to the August 29 PAS (Exhibit D-2) no point was awarded for this medical condition. Claimant’s witness stated that Claimant had this problem and was awarded a point on her previous PAS done in 2010. Department’s witness testified that ADW Program policy requires a physician’s diagnosis in order for her to award a level-of-care point for a medical condition. She testified that she attempted to contact Claimant’s primary care physician, but the telephone number was disconnected.

Orientation – The August 29 PAS (Exhibit D-2) rated Claimant at level 2, intermittently disoriented (level 2), and gave her one point for this functional ability. Claimant’s witness testified that on the previous PAS, done in 2010, Claimant was assessed at level 3, totally disoriented, and awarded her two points. The section of the PAS labeled “Nurse’s overall comments” states as follows: “Orientation: She says that she is forgetful. She knew her birthday. Daughter takes care of her bills.” Department’s witness testified that Claimant knew her name and her date of birth, so she was unable to assess Claimant as totally disoriented.

- 4) Claimant stated that she received a “D” level of care on her previous PAS and she did not understand why her monthly homemaker hours were decreasing. Neither she nor her witness made any substantive rebuttal to the Department’s testimony or evidence.

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. The Claimant was awarded 24 points as the result of a PAS completed by WVMI in August 2011. This places Claimant at a level of care of “C.” In order to receive a level of care of “D,” Claimant needs at least 26 points on the PAS.
- 2) Claimant and her witness argued that Claimant should have been awarded additional points for dysphagia and orientation.
- 3) No points will be awarded for dysphagia. There was no medical diagnosis for this condition made available to the assessing nurse during the PAS or within the following two weeks.

- 4) No additional points will be awarded for orientation. Department's witness testified that during the PAS, Claimant knew her name and her date of birth.
- 5) Since no additional points will be added to Claimant's PAS evaluation score, it will remain at 24 points. She meets the medical criteria required to receive a Level C of care.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to reduce Claimant's level of care under the Aged and Disabled Waiver Program from Level "D" to Level "C".

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 15th day of December 2011.

Stephen M. Baisden
State Hearing Officer