



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 22, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held December 13, 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 § 501.5).

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] Sutton, WV

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

**IN RE:** -----

**Claimant,**

**v.**

**ACTION NO: 11-BOR-2169**

**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 22, 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 13, 2011, on a timely appeal filed September 28, 2011.

**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

-----, Central WV Aging Services, Claimant's witness

-----, Claimant's homemaker and witness

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative

Courtenay Smith, 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 501.5.1.1(a) and chapter 501.5.1.1(b).

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community Based Services Waiver Policy Manual Chapter 501.5.1.1(a) and chapter 501.5.1.1(b)
- D-2 Pre-Admission Screening (PAS) Form dated September 8, 2011
- D-3 Notice of Decision dated September 19, 2011
- D-4 Letter of Diagnosis Confirmation sent to [REDACTED] on September 9, 2011, and returned on October 4, 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 501.5.1.1(a) and 501.5.1.1(b) 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 501.5.1.3 states in part:

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.

- 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 September 8, 2011. (Exhibit D-2.) Claimant was awarded a total of 23 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 19, 2011. (Exhibit D-3.)
- 3) Claimant asserted that she should have received three more points on her PAS. She stated she should have received these additional points on item #23, Medical Conditions/Symptoms, (f) dysphagia and (g) aphasia, and item #27, dementia.
- 4) Department's witness testified that she attempted to obtain diagnoses for these areas from Claimant's primary care physician, [REDACTED] She

testified that she sent a letter (Exhibit D-4) to [REDACTED] on September 9, 2011, which stated as follows:

The above-named patient has had an in-home assessment completed for the WV Medicaid Aged and Disabled Waiver Program. During the assessment the patient indicated she had the medical conditions/symptoms listed below. The information may affect the patient's eligibility and/or level of care. Please verify by responding as yes or no and sign and date this letter . . .

The letter lists the conditions dysphagia, aphasia and dementia.

- 5) Department's witness testified that her letter was returned to her, signed and dated by [REDACTED] on October 4, 2011. The letter has check marks at each of the three diagnoses along with the word "yes." Department's representative argued that additional medical information must be returned to the assessing nurse within two weeks of the PAS. She stated this information arrived too late for the assessing nurse to consider it in arriving at a final decision regarding Claimant's assessment. Claimant's witness, her case manager from her case management agency, agreed that this information did arrive late; however, she stated that it came from Claimant's primary care physician and it confirmed medical diagnoses for the three contested conditions on the PAS.

#### **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 23 points as the result of a PAS completed by WVMH in September 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, aphasia and dementia.
- 3) No points will be awarded for dysphagia, aphasia or dementia. The assessing nurse requested diagnoses for these conditions from Claimant's primary care physician on September 9, 2011. She did not receive a reply from the physician by September 19, 2011. It is unreasonable to expect the assessing nurse to wait any longer than this for Claimant's physician to provide needed medical information.
- 4) Since no additional points will be added to Claimant's PAS evaluation score, it will remain at 23 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 22<sup>nd</sup> day of December 2011.**

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**Stephen M. Baisden  
State Hearing Officer**