



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

February 14, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 9, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to reduce your level of care hours from Level "C" to Level "B."

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 your hearing revealed that you meet the medical criteria required for Level "B" 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 "B."

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] Morgantown, WV

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

Claimant

v.

Action Number: 10-BOR-2271

**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 February 14, 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 on February 9, 2011 on a timely appeal filed November 14, 2010. This hearing was originally scheduled for January 14, 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 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 Daughter and Representative

Cecilia Brown, 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.

This Hearing was conducted by telephone conference call.

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 "C" to a Level "B."

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 October 12, 2010
- D-3 Notice of Decision dated October 14, 2010

Claimant's Exhibits:

- C-1 Written statement from [REDACTED] Lincoln Primary Care Center, Hamlin, WV

VII. FINDINGS OF FACT:

- 1) Department's representative read 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

- 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 October 20, 2010. (Exhibit D-3.) Claimant was awarded a total of 16 points on the PAS and was approved for Level B of care. WVMJ reported its decision to Claimant in a Notice of Decision dated October 22, 2010. (Exhibit D-2.)
- 3) Claimant's representative testified that Claimant should have received two more points on her PAS. She testified that Claimant should have received one point for item #25, Vacating in the Event of an Emergency. She stated Claimant should have received one additional point on item #26, Functional Abilities, for (j) wheeling.

Vacating – Claimant's representative testified that her mother would not be able to exit her home in the event of an emergency. She stated that her mother uses a wheelchair outside the home because she does not ambulate well, and she would not be able flee her home during an emergency without assistance. Department's witness testified that she indicated on the PAS that Claimant could not vacate without assistance. She added that regardless of the level of assistance that would be needed to help Claimant evacuate, only one point is available for this item on the PAS.

Wheeling – Claimant’s representative testified that her mother used a wheelchair outside the home. Department’s witness testified that she noted this information on the PAS, on the section labeled “Nurse’s Overall Comments.” Department’s representative testified that a point is awarded for this functional limitation only if a wheelchair is needed in the home and walking is assessed at level 3 or 4, neither of which conditions were met in this case.

- 4) Claimant’s representative submitted as evidence a written statement from Claimant’s primary care physician, [REDACTED] dated January 6, 2011 (Exhibit C-1), which states as follows:

[Claimant] is a regular patient here and suffers from diabetes, congestive heart failure, and coronary artery disease. Her congestive heart failure has worsened lately. She needs the maximum amount of home health care available.

Department’s witness testified that these conditions were accounted for on item #23, Medical Conditions/Symptoms. She testified that Claimant received one point for (i) diabetes, and one point for (l) other. She added that congestive heart failure and coronary artery disease were both considered other medical conditions, and only one point may be assessed at item (l) other, regardless of the number of other medical conditions which may be present.

- 5) Claimant’s representative offered no substantial medical evidence or testimony to support her contention that Claimant should have received more points on her PAS than she was originally awarded.

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 16 points as the result of a PAS completed by WVMI in October 2010. This places Claimant at a level of care of “B.” In order to receive a level of care of “C,” Claimant needs at least 18 points on the PAS.
- 2) No additional PAS points for vacating will be awarded because only one point is available for this item on the PAS, and Claimant received one point.
- 3) No additional PAS points for wheeling will be awarded because the PAS indicates Claimant uses a wheelchair outside of her home, and policy states that a wheelchair must be used inside the home in order to receive a point for this functional ability. Also, Claimant was assessed at level 2 for the functional ability of walking, item (i), and no points for wheeling may be awarded for wheeling unless a client is assessed at level 3 for walking.

- 4) Since no additional points will be added to Claimant's PAS evaluation score, it will remain at 16 points. She meets the medical criteria required to receive a Level B 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 "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 14th day of February 2011.

**Stephen M. Baisden
State Hearing Officer**