



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

June 27, 2011

-----For:-----

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your nephew's hearing held June 23, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to reduce his 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 your nephew meets 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 nephew's 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] WV

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

**IN RE:**       -----

**Claimant,**

**v.**

**Action Number: 11-BOR-784**

**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 June 27, 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 June 23, 2011 on a timely appeal filed February 15, 2011. This hearing was originally scheduled for May 26, 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's Aunt and Guardian

-----, [REDACTED] Claimant's Witness

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative  
Melissa Bell, 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 "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 January 25, 2011
- D-3 Notice of Decision dated February 16, 2011
- D-4 Letter from Department's Witness to Claimant's primary care physician [REDACTED] [REDACTED] MD, dated January 28, 2011, and physician's faxed reply dated February 8, 2011

**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

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 January 25, 2011. (Exhibit D-2.) On the section of the PAS labeled "Physician Recommendation," the document lists Claimant's primary diagnosis as "CP [cerebral palsy] with mental retardation." Claimant was awarded a total of 25 points on the PAS and was approved for Level C of care. WVMi reported its

- 3) Department's representative submitted into evidence a letter from Department's witness to Claimant's primary care physician, [REDACTED] M.D., dated January 28, 2011, and the reply faxed from the physician's office on February 8, 2011. (Exhibit D-4.) The letter requests additional information concerning the medical diagnoses of pain, arthritis, aphasia, paralysis and contractures, to be used in the final computation of his January 25 PAS scores. The faxed physician's reply consists of a print-out of a clinical note written after Claimant visited his physician on November 22, 2010, more than two months before the PAS was completed. The fax did not address the potential diagnoses Department's witness referred to in her letter. On page two of the fax, under the section heading labeled "Physical Findings," the physician has written, "Overall findings were normal, atrophy of the lower extremities."
- 4) Claimant's guardian testified that Claimant should have received three more points on his PAS. She testified Claimant should have received two additional points on item #23, Medical Conditions/Symptoms, for (h) pain and (j) contractures. She stated he should have received one additional point on item #26, Functional Abilities, for (j) wheeling.

***Pain*** – Claimant's guardian testified that Claimant has daily pain in his arms. She testified that she had been giving him Advil daily, but that the pain has worsened so she now gives him Aleve daily. Department's representative stated that there was not a physician's diagnosis for pain in Claimant's medical records, nor were there any listed prescriptions for pain medications. She added that only prescription pain medications would permit the reviewing nurse to assess Claimant with a point for pain, over-the-counter pain medications would not do so.

***Contractures*** – Claimant's guardian testified that Claimant should be awarded a point for this medical condition because she can observe that her nephew's legs are contracted and the nurse who completed the PAS saw the same thing. Claimant's witness testified that Claimant should receive a point for contractures because the faxed clinical record from his physician (Exhibit D-4) indicates muscular atrophy, which is another term for the same medical condition. Department's witness testified that it would be unethical and illegal for her to diagnose Claimant with the condition of contractures; that diagnosis had to come from Claimant's physician. Department's representative testified that contractures and atrophy were not interchangeable terms. She stated that contractures are skeletal conditions in which a joint "locks up" or freezes, whereas

atrophy is a muscular condition in which a muscle deteriorates because of disuse or lack of exercise.

***Wheeling*** – Claimant’s guardian testified that Claimant should be awarded a point for this functional ability because even though Claimant is able to wheel himself independently through his home, he cannot wheel himself out of the home, down his wheelchair ramp, or anywhere else. Department’s representative stated that the PAS assessment applies only to his abilities inside the home. She added that whatever limitations he has outside his home cannot be considered.

- 5) Department’s representative testified that based on her professional experience with patients whose conditions were similar to Claimant’s, the possibility of awarding additional points to Claimant for medical conditions such as contractures or pain would not be unexpected. However, she added, without a physician’s diagnosis for these conditions, or without prescribed medications to treat these conditions, the assessing nurse cannot assign points. She testified that the assessing nurse performed her due diligence in contacting Claimant’s primary care physician in an attempt to obtain these diagnoses, but the physician did not return the proper documentation. Claimant’s witness testified that she also attempted to obtain documentation of additional diagnoses, but the only documents the physician would submit were additional copies of the material included in Exhibit D-4.

#### **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 25 points as the result of a PAS completed by WVMI in January 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) Policy dictates that in order to award an individual with a point on his or her PAS for a medical condition or symptom, the individual must have documentation of a diagnosis from a physician for that condition, or a prescription medication specifically for that condition. There was no physician’s diagnosis for contractures and no prescription medications for pain, so no additional points will be awarded for these conditions. Policy dictates that the PAS assessment only evaluates the functional abilities of an individual in his or her home. No additional points will be awarded for the functional ability of wheeling.
- 3) Since no additional points will be added to Claimant’s PAS evaluation score, it will remain at 25 points. He 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 "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 27<sup>th</sup> day of June 2011.**

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**Stephen M. Baisden  
State Hearing Officer**