



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

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

June 29, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 24, 2011. Your hearing request was based on the Department of Health and Human Resources' proposed reduction of homemaker hours under the Aged and Disabled Waiver Program, based on 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.

The Aged and Disabled Waiver (ADW) Program is based on current policy and regulations. One of these regulations specifies that for the ADW Program the number of homemaker service hours is determined based on the level of care. The level of care is determined by evaluating the Pre-Admission Screening (PAS) form and assigning points to documented medical conditions that require nursing services. For an individual to be awarded the level of care designated as level 'D,' a minimum of 26 points must be determined from the PAS. (Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2.1; §501.3.2.2)

The information submitted at the hearing revealed that although the Department should have awarded an additional point during your PAS assessment, this would not have resulted in a higher level of care or increased homemaker hours. No additional points were revealed through evidence or testimony.

It is the decision of the State Hearing Officer to **uphold** the Department's determination of homemaker hours under the Aged and Disabled Waiver Program.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, BoSS
Melissa Bell, WVMI
[REDACTED]

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

-----,

Claimant,

v. **Action Number: 11-BOR-817**

**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 29, 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 24, 2011 on a timely appeal, filed February 2, 2011.

It should be noted that benefits have been continued by the Department.

All persons offering testimony were placed under oath.

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's representative
-----, Claimant's witness
-----, Claimant's witness
Kay Ikerd, Department representative
Melissa Bell, Department witness

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its determination of the Claimant's homemaker hours under the Aged and Disabled Waiver Program.

V. APPLICABLE POLICY:

Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §§501.3.2.1 - 501.3.2.2
- D-2 Pre-Admission Screening for Aged/Disabled Waiver Services, dated January 17, 2011
- D-3 Notice of Decision, dated February 3, 2011
- D-4 Letter from [REDACTED] DO, dated January 31, 2011
- D-5 Prescription pad note from [REDACTED] DO, dated January 27, 2011

VII. FINDINGS OF FACT:

- 1) Claimant is a 68-year old male recipient of Aged and Disabled Waiver (ADW) Services for whom a reevaluation of medical eligibility was completed on January 17, 2011 (Exhibit D-2).
- 2) The Department issued a Notice of Decision (Exhibit D-3) to the Claimant on or about February 3, 2011. The notice states, in pertinent part:

You have been determined medically eligible to continue to receive in-home services under the Aged and Disabled Waiver Program. The number of homemaker service hours approved is based on your medical needs, and cannot exceed 124 hours per month.

- 3) Policy from Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §§501.3.2.1 – 501.3.2.2, states, in pertinent part:

501.3.2.1 LEVELS OF CARE CRITERIA

There are four levels of care for homemaker services. Points will be determined as follows, based on the following sections of the PAS:

| Section | Description of Points |
|----------------|---|
| #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. 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.

All of the above levels of care criteria information also applies to Personal Options.

503.2.2 LEVELS OF CARE SERVICE LIMITS

| 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 |

- 4) On the January 17, 2011, Pre-Admission Screening, or PAS (Exhibit D-2), Melissa Bell – a Registered Nurse employed by West Virginia Medical Institute (WVMI) – assessed 24 points for the Claimant. Seven points were awarded for medical conditions and symptoms, one for vacating, fifteen for functional abilities in the home, and one for medication administration. Ms. Bell noted that the medical condition of *paralysis* was documented and a point should have been awarded to the Claimant for this area. A total of 24 points were awarded, and, according to the testimony of Ms. Bell, 25 points should have been awarded to the Claimant. Both point levels correspond to the level of care “C,” and the service limit of 124 hours monthly noted on the decision (Exhibit D-3) issued to the Claimant.

- 5) ----- – the Claimant’s case manager – disputed two areas on the Claimant’s behalf: *incontinence of bladder*, and *incontinence of bowel*. The Department offered clarification on two areas – that the medical condition of *contractures* were noted in the PAS assessment with a corresponding point, and that *communication* was assessed as “impaired/understandable,” with no resulting points.

- 6) Ms. Bell testified that she received the letter (Exhibit D-4) and prescription pad note (Exhibit D-5) from [REDACTED] DO, indicating that the Claimant is incontinent of bladder and bowel. She testified that she based her assessment on the answers to her questions on the day of the PAS assessment, because the incontinence could have changed. Kay Ikerd testified that to assess the Claimant as incontinent of bladder and bowel, Ms. Bell would have to have known a frequency of incontinence episodes, which was not provided by the Claimant’s physician.

- 7) Ms. Bell’s PAS comments regarding continence are as follows:

CONTINENCE: 1.) BLADDER-Member/daughter denies accidents with bladder; member is scheduled for a cystoscopy due to hesitancy. 2.) BOWEL- Daughter reports an occasional accident with member?s [sic] bowels; member has had one accident within last 2 weeks.

- 8) ----- and ----- – the Claimant’s daughters – each testified that they were present during the January 17, 2011 PAS assessment. -----testified that the Claimant has episodes of incontinence of bowel seven times per week, and episodes of incontinence of bladder five to six times per day. She additionally testified that she did not state this during the PAS assessment because she was trying not to hurt the Claimant’s feelings. Upon questioning, both -----and Ms. Bell testified that Ms. Bell did explain, at the start of the PAS assessment of the Claimant, the purpose of the questions she would be asking.

- 9) Ms. Bell’s general PAS comments, in pertinent part, state:

Explained to all present reason for visit 1.) Determine medical eligibility for ADW program and 2.) if medically eligible determine member's [sic] LOC. Instructed all present that they could ask questions at any time, and that the entire assessment will be reviewed at end to ensure a more accurate assessment. Instructed member that some questions can be embarrassing and to answer honestly. All verbalized understanding.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that an individual's level of care for the Aged and Disabled Waiver Program is determined by the number of points assessed on the PAS assessment tool. The Claimant received 24 points on his January 17, 2011, PAS, and was awarded a level of care 'C.' To be awarded a level of care 'D,' a minimum of 26 points is required. During the hearing, the Department conceded that an additional point should have been awarded for the medical condition of *paralysis*, resulting in a corrected 25 points.

- 2) The Department received and reviewed information from the Claimant's physician indicating the Claimant is incontinent, but did not rely on this because it contradicted the information provided by the Claimant and her daughter on the day of the PAS assessment, and the continence of the Claimant could have changed since his last visit with his physician. The testimony of the Claimant's daughter regarding both continence of bladder and bowel is unconvincing, given that she was present for the PAS assessment and her testimony directly contradicts what she reported during that assessment. Although this may have been an embarrassing topic during the PAS assessment, the Claimant's daughter and the WVMi nurse agreed the purpose of the assessment was explained at the time, and the WVMi nurse noted that she stressed the importance of honest answers to even embarrassing questions. The Department was correct in its assessment of both continence of bladder and bowel, and in the level of care 'C' assigned to the Claimant.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's determination of level of care and homemaker hours under the Aged and Disabled Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of June, 2011.

**Todd Thornton
State Hearing Officer**