



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Earl Ray Tomblin
Governor

Board of Review
2699 Park Avenue, Suite 100
Huntington, West Virginia 25704

Rocco S. Fucillo
Cabinet Secretary

October 9, 2012

Dear Ms. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 13, 2012. Your hearing request was based on the Department of Health and Human Resources' reduction of level of care for Aged and Disabled Waiver services.

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 "C," a minimum of 18 points must be determined from the PAS. (Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.5.1.1(a); §501.5.1.1(b))

The information submitted at the hearing revealed that the Department correctly assessed your level of care for ADW services.

It is the decision of the State Hearing Officer to **uphold** the Department's determination of your level of care for ADW services.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, BoSS
Sarah Carpenter, WVMI
----, Case Management Agency

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

IN RE: ----,

Claimant,

v.

ACTION NO.: 12-BOR-1808

**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 October 9, 2012, for ----. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This hearing was convened on September 13, 2012, on a timely appeal, filed July 12, 2012.

All persons offering testimony were placed under oath.

II. PROGRAM PURPOSE:

The Aged/Disabled Waiver (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

----, Claimant's witness

Pam Pushkin, Department representative

Sarah Carpenter, 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 level of care for Aged and Disabled Waiver services.

V. APPLICABLE POLICY:

Chapter 501: Aged & Disabled Waiver Services Manual

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 501: Aged & Disabled Waiver Services Manual, §§501.5.1.1(a) – 501.5.1.1(b)
- D-2 Notice of Decision, dated July 5, 2012
- D-3 Pre-Admission Screening for Aged/Disabled Waiver Services, dated June 14, 2012
- D-4 Pre-Admission Screening for Aged/Disabled Waiver Services, dated July 7, 2011

VII. FINDINGS OF FACT:

- 1) The Claimant is a 49-year-old female recipient of ADW services for whom a reevaluation of medical eligibility was completed on June 14, 2012 (Exhibit D-3).
- 2) On or about July 5, 2012, the Department mailed Claimant a notice of decision (Exhibit D-2) stating that she continued to be medically eligible for the ADW program, with homemaker service hours that "...cannot exceed 93 hours per month." This corresponds with a level of care "B." Sarah Carpenter – a Registered Nurse employed by West Virginia Medical Institute (WVMI) – testified that the level of care "B" represents a reduction from the Claimant's previous level of care, which was level "C."
- 3) Pam Pushkin, representative for the West Virginia Department of Health and Human Resources' (Department) Bureau of Senior Services – the bureau responsible for administering the ADW program – testified that the applicable policy for this decision is Chapter 501: Aged & Disabled Waiver Services Manual, §§501.5.1.1(a) – 501.5.1.1(b) (Exhibit D-1). This policy states, in pertinent part:

501.5.1.1(a) Service Level Criteria

There are four Service Levels for Personal Assistance/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 at Level 3 or Level 4 in order to get points 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.

501.5.1.1(b) Service Level Limits

Traditional Service Levels

Level	Points Required	Range of Hours Per Month (for Traditional Members)
A	5-9	0 – 62
B	10-17	63 – 93
C	18-25	94 – 124
D	26-44	125 – 155

- 4) Ms. Carpenter conducted the June 14, 2012, Pre-Admission Screening (PAS) assessment form (Exhibit D-3) with the Claimant and assessed 17 level-of-care points. Four points were awarded for medical conditions and symptoms, one for vacating, ten for functional abilities in the home, one for medication administration, and one for dementia. Based on this point level the Claimant was assessed at a level “B” and the notice of decision (Exhibit D-2) was issued to the Claimant.
- 5) Two additional areas were proposed on the Claimant’s behalf: *vision* and the medical condition or symptom of *paralysis*.

- 6) The Claimant testified that her *vision* condition is not correctable, and she was assessed at a level characterized as “impaired/correctable.” ----, the Claimant’s witness from her case management agency, testified that documentation from the Claimant’s physician was submitted to the Department to support a finding of right eye blindness that is not correctable.
- 7) The Claimant testified that she suffers from *paralysis*, and Ms. ---- testified that the documentation from the Claimant’s physician noted this condition as well.
- 8) Ms. Carpenter made the following notes, in pertinent part, in her PAS comments entered after receipt of the documentation from the Claimant’s physician:

6/25/12 605pm Reviewed additional information faxed by ----- CM LMS, [prescription] was from Dr. ---- DO dated 6/20/12 with additional [diagnosis] of [left] side paresis CP [right] eye blindness and uncontrolled DM. [Left] side paresis is not considered full paralysis of a limb, and according to WVBMS a [diagnosis] must be documented as paralysis from a MD/DO in order to be considered verifiable on this section of PAS...the [diagnosis] of [right] eye blindness was already verified the day the PAS/HV was completed, the [member] reported sufficient vision in her [left] eye with her glasses to read large print and to watch television, her vision is not presently prohibiting her functional ability inside her home.

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 17 points on her June 14, 2012 PAS, resulting in a level of care “B.” To be awarded a level of care “C,” a minimum of 18 points is required.
- 2) The Claimant proposed two areas – *vision* and *paralysis* – for additional PAS points.
- 3) For *vision*, the Department uses a standard of functional ability in the home, and the PAS assessment of the Claimant in this area is correct. The Claimant suffers from blindness in one eye, but reported that with glasses and the use of her other eye she maintains sufficient vision to meet this functional ability standard.
- 4) Regarding *paralysis*, the Department is unable to accept a diagnosis of paresis to satisfy the diagnostic requirement for this medical condition or symptom. The Department did not have a diagnosis to verify this area, and correctly assessed the Claimant based on what was received.

- 5) With no additional points revealed through testimony and evidence, the Department's determination of level of care for ADW services for the Claimant is correct.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's determination of level of care 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 October 2012.

**Todd Thornton
State Hearing Officer**