



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 18, 2012

----  
----  
----

Dear Ms. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 27, 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 "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, §501.5.1.1(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  
Kim Sang, WVMI  
----, Case Management Agency

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

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

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-1841**

**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 18, 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 27, 2012, on a timely appeal, filed July 24, 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  
----, Claimant's witness  
Kay Ikerd, Department representative  
Kim Sang, 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 Pre-Admission Screening for Aged/Disabled Waiver Services, dated July 17, 2012
- D-3 Notice of Decision, dated July 19, 2012
- D-4 Pre-Admission Screening for Aged/Disabled Waiver Services, dated July 18, 2011

**VII. FINDINGS OF FACT:**

- 1) The Claimant is a 72-year-old female recipient of ADW services for whom a reevaluation of medical eligibility was completed on July 17, 2012 (Exhibit D-2).
- 2) On or about July 19, 2012, the Department mailed Claimant a notice of decision (Exhibit D-3) stating that she continued to be medically eligible for the ADW program, with homemaker service hours that "...cannot exceed 124 hours per month." This corresponds with a level of care "C." Kim Sang – a Registered Nurse employed by West Virginia Medical Institute (WVMI) – testified that the level of care "C" represents a reduction from the Claimant's previous level of care, which was level "D."
- 3) Kay Ikerd, 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:

<b>Section</b>	<b>Description of Points</b>
#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 <b>a</b> through <b>i</b> .  Level 3 – 2 points for each item <b>a</b> through <b>m</b> <b>i</b> (walking) must be at Level 3 or Level 4 in order to get points for <b>j</b> (wheeling)  Level 4 – 1 point for <b>a</b> , 1 point for <b>e</b> , 1 point for <b>f</b> , 2 points for <b>g</b> through <b>m</b>
#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. Sang conducted the July 17, 2012, Pre-Admission Screening (PAS) assessment form (Exhibit D-2) with the Claimant and assessed 20 level-of-care points. Seven 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 prognosis. Based on this point level the Claimant was assessed at a level “C” and the notice of decision (Exhibit D-2) was issued to the Claimant.
- 5) Six additional areas were proposed on the Claimant’s behalf: *bathing, grooming, dressing, continence of bowels, transferring, and walking.*

- 6) The Claimant testified that she requires total care in the areas of *bathing, grooming, and dressing*. Ms. Sang assessed the Claimant as requiring physical assistance in each of these areas. Ms. Sang testified that the Claimant would have to have been unable to assist in any way in these functional areas to have been assessed as requiring total care. The Claimant testified that she is unable to help at all in these areas. ---- testified that she has been the Claimant's caregiver since February 2012 and that she has to bathe everything for the Claimant except her face, arms, and hands. Ms. Sang's PAS comments (Exhibit D-2) regarding *bathing* note the Claimant is "...able to help in washing her body." Ms. Sang's PAS comments regarding *dressing* note the Claimant is "...able to get her own shirt on." Regarding *grooming*, Ms. Sang noted on the PAS that the Claimant is "...able to soak her own dentures."
- 7) The Claimant testified that she has accidents – with regard to *continence of bowels* – on a daily basis. Ms. ---- testified that the Claimant has three to four such accidents per day, and speculated that the Claimant was confused and embarrassed when she reported accidents occurring less frequently. Ms. Sang testified that the Claimant reported to her at the time of the assessment she had accidents "a couple of times per month," and that the last accident was two weeks prior to the assessment date. Based on this reporting, Ms. Sang testified that she assessed the Claimant as occasionally incontinent, and for her to have assessed the Claimant as incontinent of bowels, the reported frequency would have been at least three times per week.
- 8) The Claimant testified that she requires one-person assistance with regard to the areas of *transferring and walking*. She testified that she uses a walker but sometimes requires help. She testified that she suffers from weakness, dizziness, and pain, and that she is afraid she will fall. Ms. ---- testified that the Claimant uses a walker, but that she sometimes assists the Claimant. Ms. Sang testified that on the day of the assessment she witnessed the Claimant transfer and walk. Ms. Sang testified that the Claimant reported needing help with transferring "two to three times per week," but that at the time of the assessment the Claimant used a straight cane and there were no reported falls in the home. Ms. Sang testified that she assessed the Claimant as requiring supervision or an assistive device with regard to both *walking and transferring*. She testified that when considering a mixture of reported functional abilities – such as sometimes using an assistive device and sometimes requiring one-person assistance – she would assess an individual at the higher level once the higher level makes up greater than 50% of instances.
- 9) With regard to her reported statements at the time of the assessment, the Claimant testified that she did not recall what she had said and that she was confused at the time. Ms. Sang testified that she recorded her observations and the Claimant's responses to questions at the time of the assessment, and reviewed those findings with the Claimant. She testified that the Claimant was unaccompanied during the assessment, but that the Claimant's case management agency was aware of the assessment and that an individual from that agency could have been present if they determined the Claimant needed assistance with her responses. She testified that she assessed the Claimant's area of *orientation* as intermittently disoriented, but noted (Exhibit D-2) that on the day

of the assessment the Claimant was oriented to person, place, and time. Ms. Sang testified that the Claimant was able to answer questions appropriately during the assessment, and that she noted a letter from the Claimant's physician indicating that the Claimant was able to make decisions for herself and did not require a representative for that purpose.

#### 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 20 points on her July 17, 2012 PAS, resulting in a level of care "C." To be awarded a level of care "D," a minimum of 26 points is required.
- 2) The Claimant proposed six areas – *bathing, grooming, dressing, continence of bowels, transferring, and walking* – for additional PAS points.
- 3) For *bathing, grooming, and dressing*, the Claimant indicated she should have been assessed as requiring total care, but testimony and evidence clearly demonstrated she was able to assist in some way with the performance of all three of these functional areas. Because the higher assessment level in these areas is total care, the Department correctly assessed the Claimant as requiring physical assistance in these areas.
- 4) Regarding *continence of bowels*, the Department assessed the Claimant as occasionally incontinent based on the Claimant's statement at the time of the assessment regarding the frequency of her incontinence episodes. The Claimant and her caregiver testified during this hearing that the Claimant has daily episodes of incontinence, but at the time of the assessment the Claimant reported only a "couple" of episodes per month. The Claimant and her caregiver reported that she was confused during the assessment, but the Department's assessing nurse noted no disorientation or inability to answer questions on the day of the assessment, and the caregiver was not present to assist the Claimant. The Department's assessing nurse also indicated she relied on a letter from the Claimant's physician, certifying the Claimant's ability to make decisions independently. The Department's assessment of occasional incontinence is correct based on the information provided, and no additional point is warranted in the area of *continence of bowels*.
- 5) The Claimant and her caregiver testified that the Claimant requires one-person assistance for walking and transferring, but that she also uses an assistive device. The Department's assessing nurse testified that when two levels partially describe an individual's functional ability, the assessed level is based on what the individual requires the majority of the time. The Department's assessing nurse witnessed the Claimant walking and transferring with the use of an assistive device on the day of the assessment, and noted the Claimant's report that she required one-person assistance two to three times per week. It is reasonable to conclude that the Claimant would need to transfer and walk more than five times per week, and as such, that she functions in both

areas with the help of an assistive device the majority of the time. The Department correctly assessed the areas of *walking* and *transferring* as requiring supervision or an assistive device, and no additional points are warranted in these areas.

- 6) 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**