



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

January 31, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held January 27, 2012. 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 and 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 or hours, which is reviewed and approved by WVMI (Aged and Disabled Home and Community Based Waiver Policy and Procedures Manual § 501.5).

The information submitted at this 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] Home and Community Services, [REDACTED] WV

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

IN RE:

Claimant,

v.

ACTION NO: 11-BOR-2094

**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 January 31, 2012 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 at the Logan County Office of the WV DHHR, with Department's representative and witness appearing by telephone conference call on January 27, 2012, on a timely appeal filed September 20, 2011. This hearing was originally scheduled for November 1, 2011, but was rescheduled at Department's requests.

II. PROGRAM PURPOSE:

The Program entitled Aged and 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

-----, [REDACTED] Home and Community Services, Claimant's Representative

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
-----, 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.

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 and Disabled Home and Community Based Waiver Policy Manual, chapter 501.5.1.1(a) and chapter 501.5.1.1(b).

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged and Disabled Home and Community Based Services Waiver Policy Manual Chapter 501.5.1.1(a) and chapter 501.5.1.1(b)
- D-2 Pre-Admission Screening (PAS) Form dated September 7, 2011
- D-3 Notice of Decision dated September 26, 2011
- D-4 Pre-Admission Screening (PAS) Form dated October 21, 2010

Claimant's Exhibits

- C-1 Information request sent from [REDACTED] Home and Community Services to [REDACTED] MD, and returned by him on September 19, 2011

VII. FINDINGS OF FACT:

- 1) Department's representative entered into the record the applicable policy for this hearing. (Exhibit D-1.) Aged and Disabled Home and Community Based Waiver Policy Manual Chapter 501.5.1.1(a) and 501.5.1.1(b) 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 and Disabled Home and Community Based Waiver Policy Manual Chapter 501.5.1.3 states in part:

Nurses shall not render medical diagnoses. In those cases where there is a medical diagnosis question, the decision shall be based on medical evidence presented by appropriate medical professionals.

- 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 September 7, 2011. (Exhibit D-2.) Claimant was awarded a total of 15 points on the PAS and was approved for Level B of care. WVMi reported its findings to Claimant in a Notice of Decision dated September 26, 2011. (Exhibit D-3.)

- 3) Claimant's representative asserted that Claimant should have received three more points on her PAS. She stated Claimant should have received these additional points on item #23, Medical Conditions/Symptoms, (a) angina at rest, (b) angina at exertion, and (h) pain. Department's representative argued that in order to receive Level-of-Care points for these medical conditions and/or symptoms, the assessing nurse would require diagnoses from Claimant's physician.
- 4) Claimant's representative testified that she attempted to obtain diagnoses for these conditions from Claimant's primary care physician, [REDACTED] M.D. She testified that she sent a letter (Exhibit C-1) to [REDACTED] on September 19, 2011, which stated as follows:

[Claimant's] annual PAS screening was completed on 09/07/11. Her Level of Care was decreased from a "C" level . . . to a "B" level . . . The following diagnoses need to be verified and submitted to WVMI today in order for [Claimant] to continue receiving Waiver Services at the "C" level. Please place a check mark beside each diagnosis . . . Sign and date bottom of form, then fax back to me . . .

The letter lists the conditions of angina at rest, angina at exertion, pain, the need for continuous oxygen, and dysphagia.

- 5) Department's witness testified that her letter was returned to her, signed and dated by [REDACTED] on September 19, 2011. The letter (Exhibit C-1) has an "X" at the space for continuous oxygen, along with the word "yes." None of the other diagnoses are checked, and the physician has indicated "No" at each diagnosis. Claimant received a Level-of-Care point for the use of continuous oxygen.

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 obtained on the PAS assessment tool. The Claimant was awarded 15 points as the result of a PAS completed by WVMI in September 2011. 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) Claimant's representative argued that Claimant should have been awarded additional points for the medical diagnoses of angina at rest, angina at exertion, and pain.
- 3) No additional points will be awarded for any of these medical conditions or symptoms. Claimant does not have a physician's diagnosis for any of the three conditions.

- 4) Since no additional points will be added to Claimant's PAS evaluation score, it will remain at 15 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 31st day of January 2012.

**Stephen M. Baisden
State Hearing Officer**