



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 20, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held January 4, 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/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 § 501.5).

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] WV

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/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/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 October 3, 2011
- D-3 Notice of Decision dated October 17, 2011

VII. FINDINGS OF FACT:

- 1) Department's representative entered into the record the applicable policy for this hearing. (Exhibit D-1.) Aged/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/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 October 3, 2011. (Exhibit D-2.) Claimant was awarded a total of 17 points on the PAS and was approved for Level B of care. WVMH reported its findings to Claimant in a Notice of Decision dated October 17, 2011. (Exhibit D-3.)
- 3) Claimant's representative asserted that Claimant should have received two more points on her PAS. She stated Claimant should have received these additional points on item #23, Medical Conditions/Symptoms, (e) paralysis and item #34, Alzheimer's, multi-farct, senile dementia or related condition.
- 4) **Paralysis** – According to the October 3 PAS (Exhibit D-2) no points were awarded for this medical condition. Claimant's representative stated that Claimant was awarded a point for paralysis on her 2010 PAS and she thought Claimant should have received a point on the current PAS due to Claimant's hemiplegia. Department's witness testified that she conducted the 2010 PAS as well as the

current one, and she inadvertently awarded Claimant a level-of-care point for paralysis when the diagnosis was for hemiplegia. She stated that hemiplegia is a diagnosis of weakness in an extremity, while paralysis means that the patient cannot move the extremity at all. She stated that Claimant was able to lift her left arm and grip with her left hand, although her left side was weaker than her right.

- 5) *Alzheimer's, multi-farct, senile dementia or related condition* – The October 3 PAS (Exhibit D-2) gave Claimant no points for this PAS item. Claimant's representative stated that Claimant's medical records document she has had several cranial infarctions. Department's representative stated that in order to receive a point for this PAS item, there must be clinical documentation to indicate that the cranial infarctions have affected cognitive functioning. She added that Claimant's medical records do not document this.

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 17 points as the result of a PAS completed by WVMI in October 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 paralysis and Alzheimers, multi-farct, senile dementia or related condition.
- 3) No additional points will be awarded for paralysis. Claimant has been diagnosed with hemiplegia, which is a weakness of an extremity. In order to receive a level-of-care point for this medical condition, the PAS should have indicated Claimant could not move the extremity at all.
- 4) No points will be awarded for Alzheimer's, multi-farct, senile dementia or related condition. Claimant has had strokes, but no medical documentation was submitted to indicate her strokes affected her cognitive functioning.
- 5) Since no additional points will be added to Claimant's PAS evaluation score, it will remain at 17 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 20th day of January 2012.

**Stephen M. Baisden
State Hearing Officer**