



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

April 25, 2012

-----, RN For: -----

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on ----- hearing held March 27, 2012. Her hearing request was based on the Department of Health and Human Resources' decision to decrease her level of care hours from Level "C" to Level "B."

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.

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 ----- meets 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 decrease ----- homemaker service hours under the Aged and Disabled Waiver Program to Level "B."

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Kay Ikerd, RN, WV Bureau of Senior Services

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

IN RE: ---- ----

Claimant,

v.

ACTION NO: 12-BOR-623

**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 April 25, 2011 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 Fair Hearing was conducted by telephone conference call on March 27, 2012, on a timely appeal filed January 26, 2012.

II. PROGRAM PURPOSE:

The Program entitled Aged/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

██████████ RN, Integrated Resources, Claimant's Representative

---- ----, Claimant's Granddaughter and Witness

██████████ RN, Mountainheart Community Services, Claimant's Witness

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

Anna Matney, 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. QUESTION 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 and chapter 501.5.1.3

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 501.5.1.1(b)
- D-2 Pre-Admission Screening (PAS) dated January 6, 2012
- D-3 Notice of Decision dated January 9, 2012
- D-4 Pre-Admission Screening (PAS) dated January 10, 2011

Claimant's Exhibits:

- C-1 Statement signed by ---- ---- ---- ----, Physician's Assistant, on March 9, 2012 and faxed to [REDACTED] Community Services on March 12, 2012.

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 as follows:

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 (F) states:

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 January 6, 2012. (Exhibit D-2.) Claimant was awarded a total of 15 points on the PAS and was approved for Level B of care. WVMC reported its findings to Claimant in a Notice of Decision dated January 9, 2012. (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, (f) dysphagia, and item #26, Functional Abilities, (h) transferring and (i) walking.
- 4) **Dysphagia** – According to the January 2012 PAS (Exhibit D-2), no point was awarded for this medical condition. Department's witness testified that ADW

Program policy requires a physician's diagnosis or a medication meant specifically to treat that condition in order for her to award a level-of-care point for any medical condition. She testified that she had no diagnosis and found no medication for dysphagia.

- 5) **Transferring** – Department's witness testified that Claimant was assessed at level 2, Supervised/Assistive device, and awarded one level-of-care point for this functional ability. Department's witness recorded on "Nurse's overall comments" section of the January 2012 PAS (Exhibit D-2), "[Claimant] pushes off the mattress [of her bed] and uses the handle on the [bed-side chair] to pull up to stand from the bed. She pushes off the chair arms to stand from it. She uses a commode with an elevated seat. She says she can get up from the commode herself." Claimant's representative stated that Claimant's homemaker mistakenly thought the WVMi nurse who was conducting the PAS wanted to see how Claimant walked without any assistance, so she did not help the Claimant walk. Department's witness testified that she observed Claimant get from a sitting to a standing position without someone to assist her, which meets the criteria for Supervised/Assistive device.
- 6) **Walking** – The January 2012 PAS (Exhibit D-2) rated Claimant at level 2, Supervised/Assistive device, and gave her one point for this functional ability. Department's witness recorded in the "Nurse's overall comments" section, "[Claimant] uses a walker in the home. Gait is slow and unsteady." Claimant's representative reiterated that Claimant's homemaker did not assist Claimant in walking because she thought the WVMi nurse wanted to see how well Claimant walked without any assistance. Department's witness testified that she specifically asked Claimant and her homemaker to demonstrate how Claimant walked in the home if no one is present. She added that Claimant demonstrated walking without hands-on assistance.
- 7) Claimant's representative submitted into evidence a letter from Claimant's Physician's Assistant, ---- ---- ---- ----, dated March 9, 2012. (Exhibit C-1.) This statement reads as follows:

"To whom it may concern:
[Claimant] needs to have hands-on assistance to walk and transfer and has problems with dysphagia so she will need to have increased hours of assistance."

Claimant's representative argued that this statement should be sufficient to award Claimant with a deficit for dysphagia, transferring and walking. She added that Claimant's case record documents many instances of Claimant's falls while walking and/or transferring. Department's representative argued that the statement from Claimant's physician's assistant was written on March 9, 2012, two months after the PAS. She argued that this letter was not available to the assessing nurse at the time of the PAS or within two weeks. She added that Claimant's case

management agency did not submit any documentation to the Department which charts the falls or other home accidents Claimant has suffered.

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 15 points as the result of a PAS completed by WVMI on January 6, 2012. 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 dysphagia, transferring and walking.
- 3) No points will be awarded for dysphagia. There was no medical diagnosis for this condition made available to the assessing nurse during the PAS or within the following two weeks.
- 4) No additional points will be added for transferring. Department's witness recorded on the January 2012 PAS that she observed Claimant transfer from her chair to a standing position without the assistance of another person.
- 5) No additional points will be added for walking. Department's witness recorded on the January 2012 PAS that she observed Claimant walking with an assistive device, a walker.
- 6) 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 to Level "B".

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 25th day of April 2012.

**Stephen M. Baisden
State Hearing Officer**