



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

May 21, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held April 24, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your level of care hours from Level "D" to Level "C."

In arriving at a decision, the State Hearing Examiner 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 the number of homemaker service hours in the Aged and Disabled Waiver Program 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 the WV Medical Institute (WVMI) (Aged and Disabled Home and Community Based Waiver Services Policy and Procedures Manual § 501.5).

The information submitted at this hearing revealed that you meet the medical criteria required for Level "C" care.

It is the decision of the State Hearings Examiner to **Uphold** the proposal of the Department to reduce your homemaker service hours under the Aged and Disabled Waiver Program to Level "C."

Sincerely,

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

cc: Erika Young, Chairman, Board of Review
Kay Ikerd, RN, WV Bureau of Senior Services
-----, Allied Nursing and Community Services, [REDACTED] WV

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

IN RE: -----

Claimant,

v.

ACTION NO.: 12-BOR-675

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

Respondent.

DECISION OF STATE HEARING EXAMINER

I. INTRODUCTION:

This is a report of the State Hearing Examiner resulting from a Fair Hearing concluded on May 21, 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 Fair Hearing was convened by telephone conference call on April 24, 2012, on a timely appeal filed February 10, 2012.

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's Representative

-----, Allied Nursing and Community Services, Claimant's Witness

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
Connie Sankoff, 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 proposal to reduce Claimant's homemaker hours from a Level "D" to a Level "C."

V. APPLICABLE POLICY:

Aged and Disabled Home and Community Based Waiver Services 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 Waiver Services Policy Manual Chapter 501.5.1.1(a) and Chapter 501.5.1.1(b)
- D-2 Pre-Admission Screening (PAS) Form dated January 10, 2012
- D-3 Notice of Decision dated January 20, 2012
- D-4 Pre-Admission Screening (PAS) Form dated January 20, 2011
- D-5 Letter faxed from WVMI to -----, MD, on January 19, 2012, signed and returned by Dr. ----- on January 20, 2012
- D-6 Letter from -----, MD, dated February 3, 2012

Claimant's Exhibits:

- C-1 --- Pharmacy prescription label, dated February 5, 2012

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 Services 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 Services 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, a nurse with the WV Medical Institute (WVMI) testified that she conducted a Pre-Admission Screening (PAS) for the Aged and Disabled Waiver Services (ADW) program with Claimant on January 10, 2012. (Exhibit D-2.) She testified that Claimant, Claimant's Case Manager, Claimant's sister and she were present for the PAS. Claimant was awarded a total of 24 points on the PAS and was approved for Level C of care. WVMI reported its findings to Claimant in a Notice of Decision dated January 20, 2012. (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 for (c) dyspnea and (j) contractures.
- 4) According to the January 10, 2012, PAS (Exhibit D-2), no points were awarded for the medical conditions of dyspnea or contractures. 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 specifically for the treatment of dyspnea or contractures. Department's witness stated that after she completed the January 10 PAS, she attempted to obtain additional diagnoses from Claimant's physician, -----, MD. She stated that on January 19, 2012, she sent Dr. ----- a letter asking him to verify certain medical conditions and/or symptoms. (Exhibit D-5.) The letter indicates that the assessing nurse specified the conditions for which she sought verification. She wrote, "S.O.B. [shortness of breath]," "dysphagia" and "contractures" and after each condition, she wrote "Y or N," so that the physician merely had to circle the appropriate response. According to Exhibit D-5, Dr. ----- returned this document on January 20, 2012. Next to the conditions "S.O.B." and "Dysphagia" he wrote "not discussed with patient," and next to "contractures" he circled "N" and wrote, "left-sided hemiparesis secondary to CVA [stroke]."
- 5) Department's representative submitted as evidence a letter signed by Dr. ----- and dated February 3, 2012. (Exhibit D-6.) She stated that the physician sent this letter to Claimant's case management agency, Allied Nursing and Community Services, who forwarded it to WVMI. The letter states as follows:

To whom it may concern:

I had the pleasure of evaluating [Claimant] today in my clinic at the -
---- ----- Medicine Center. She does indeed suffer from
contractures in her left foot and hand. This patient also reports
dysphagia, which is likely secondary to a hiatal hernia.

Department's representative pointed out that the PAS was conducted on January 10, 2012. She argued that this letter, dated February 3, 2012, was written more than three weeks after the PAS, so the WVMi nurse did not have access to this information in a timely manner. Claimant's representative stated that Dr. ----- had been Claimant's physician for only a short time. She added that he wrote the February 3 letter after he uncovered the above-stated information in Claimant's medical records.

- 6) Claimant's witness testified that Claimant had a prescription for a medication used to treat dyspnea. She submitted as evidence a prescription dated February 5, 2012, for Proair, a medication delivered by inhaler. (Exhibit C-1.) Department's representative did not contest that this medication is used as a treatment for dyspnea, but she pointed out that this prescription is dated February 5, 2012, more than three weeks after the PAS was conducted.

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 assessed with 24 points as the result of a PAS completed by WVMi on January 10, 2012. This places Claimant at a level of care of "C." In order to receive a level of care of "D," Claimant needed at least 26 points on the PAS.
- 2) No additional level-of-care points will be added to the PAS score for the medical conditions of dyspnea or contractures. The WVMi nurse who conducted the January 10, 2012, PAS did not receive the information which may have supported the assessment of additional points for these medical conditions in a timely fashion.
- 3) Since no additional points will be added to Claimant's PAS evaluation score, it will remain at 24 points. Claimant meets the medical criteria required to receive a Level C of care.

IX. DECISION:

It is the decision of the State Hearing Examiner to **uphold** the decision of the Department to reduce Claimant's level of care under the Aged and Disabled Waiver Program from Level "D" to Level "C".

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 21st day of May 2012.

Stephen M. Baisden
State Hearing Examiner