



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 15, 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' decision 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-676

**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 15, 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 13, 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

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

-----, Claimant's Homemaker and Witness

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
Kathy Gue, 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 "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 30, 2012
- D-3 Pre-Admission Screening (PAS) Form dated March 3, 2011
- D-4 Notice of Decision dated February 6, 2012
- D-5 Statement from APS Healthcare to Claimant dated September 12, 2011

Claimant's Exhibits:

- C-1 Documents faxed from Claimant's case management agency to Board of Review on April 6, 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 30, 2012. (Exhibit D-2.) She testified that Claimant, Claimant's Case Manager, Claimant's Homemaker and she were present for the PAS. Claimant was awarded a total of 20 points on the PAS and was approved for Level C of care. WVMI reported its findings to Claimant in a Notice of Decision dated February 6, 2012. (Exhibit D-4.)

- 3) Claimant's Representative asserted that Claimant should have received two more points on her PAS. He stated she should have received these additional points on item #26, Functional Abilities, for (f) continence of bowels, and on item #27 for (a) physical therapy.
- 4) ***Bowel Incontinence*** – The January 30, 2012 PAS (Exhibit D-2) rated Claimant at level 1, continent, and assessed her with no level-of-care points for this functional ability. The section of the PAS labeled “Nurse’s overall comments” states as follows: “[Claimant] wears pads, incontinence of bladder greater than [three times per week] . . . No incontinence of bowels.” She added that she reviewed the results of the PAS with everyone present, and no one disagreed with or questioned her findings. Claimant’s representative stated that after speaking with Claimant after the PAS, he believed she may have been confused about this item and therefore did not answer correctly. He submitted into evidence a statement from Claimant’s primary care physician dated April 5, 2012 (Exhibit C-1, page 2), which states, “Please increase caregiver hours as [Claimant] has significant problems with her bowel movements . . .” Department’s Representative stated that the physician’s statement was dated April 5, 2012, well after the two-week period the assessing nurse allowed for Claimant’s physician or others to submit additional information for the PAS. Also, she added, the statement that Claimant has “significant problems” with her bowels does not indicate if Claimant has bowel incontinence or some other problem, nor does it state the frequency of bowel accidents.
- 5) ***Physical Therapy*** – Claimant’s representative argued that Claimant had been receiving physical therapy until just before the PAS was conducted. He stated that the physical therapy was discontinued because Claimant was preparing for surgery, but her physician has reinstated it. Department’s Representative pointed out that physical therapy is found at item #27, Professional and Technical Care needs, and by policy, the only area under this item wherein a member may receive a level-of-care point is for continuous oxygen, #27 (e).

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 20 points as the result of a PAS completed by WVMi on January 30, 2012. This places Claimant at a level of care of “C.” In order to receive a level of care of “D,” Claimant needs at least 26 points on the PAS.
- 2) The evidence is not sufficient to support a finding of additional points for continence of bowel. Department’s witness testified and recorded on the January 2012 PAS that Claimant reported being continent, and reported that no one present for the PAS protested this finding.

- 3) No additional points will be assessed for physical therapy. Policy indicates that on item #27 of the PAS, Professional and Technical Needs, the only area wherein a level-of-care point may be assessed is area (e), continuous oxygen.
- 4) Since no additional points will be added to Claimant's PAS evaluation score, it will remain at 20 points. She 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 15th day of May 2012.

**Stephen M. Baisden
State Hearing Examiner**