



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
203 E. Third Avenue  
Williamson, WV 25661

Joe Manchin III  
Governor

Patsy A. Hardy, FACHE, MSN, MBA  
Cabinet Secretary

September 21, 2010

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 24, 2010. 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 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 WVMH (Aged/Disabled Home and Community Based Waiver Policy and Procedures Manual § 501.3).

The information submitted at your hearing revealed that you do not meet the medical criteria required for Level "D" 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 "C."

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]

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

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**Claimant**

v.

**Action Number: 10-BOR-1138**

**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 September 21, 2010 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 on August 24, 2010 on a timely appeal filed March 29, 2010.

**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 that 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

-----, Claimant's witness and spouse

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

This Hearing was conducted by telephone conference call.

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 "D" to a Level "C."

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community Based Waiver Policy Manual, chapter 501.3.2.1 and chapter 501.3.2.2.

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community Based Services Waiver Policy Manual Chapter 501.3.2.1 and 501.3.2.2
- D-2 Pre-Admission Screening (PAS) Form dated January 11, 2010
- D-3 Notice of Decision dated January 19, 2010

**VII. FINDINGS OF FACT:**

- 1) Department's representative read into the record the applicable policy for this hearing. (Exhibit D-1.) Aged/Disabled Home and Community Based Waiver Policy Manual Chapter 501.3.2.1 and 501.3.2.2 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

- 2) Department's witness testified that she scheduled a Pre-Admission Screening (PAS) for the Aged and Disabled Waiver Services (ADW) program with Claimant, conducted it on January 11, 2010 and completed it on January 19, 2010. (Exhibit D-2.) Claimant was awarded a total of 21 points on the PAS and was approved for Level C of care. WVMI communicated its decision to Claimant in a Notice of Decision dated January 19, 2010. (Exhibit D-3.)
- 3) Claimant and her spouse testified that Claimant should have received two more points on her PAS. They stated Claimant should have received one more point on item #23, Medical Conditions/Symptoms, for dyspnea (shortness of breath). They further stated Claimant should have received one more point at item #26, functional abilities, for bladder continence at Level 3.

***Dyspnea*** – Claimant and her spouse testified that Claimant does have shortness of breath. Department's witness testified that she cannot award a point for any medical condition or symptom listed at item #23 unless the referring physician has included that diagnosis on the referral to the ADW program. Department's witness added that she contacted Claimant's primary care physician to see if Claimant's physician would add this diagnosis. The witness stated

she faxed a letter to the physician's office requesting verification of this and other diagnoses but received no reply.

***Bladder Continence*** – On the January 11 PAS, the reviewer assessed Claimant's bladder incontinence functional level as Level 2, and awarded one point toward Claimant's level of care determination. The nurse reviewer wrote in the "Overall Comments" or narrative section, "[Claimant] says that she has bladder incontinence that occurs 'just ever [*sic*] so often.' Denies that this occurs three or more times weekly." Claimant's spouse testified that Claimant's bladder incontinence has gotten worse since the PAS was completed in January 2010. He stated that Claimant is having multiple accidents daily and that he cannot transport Claimant to a physician's appointment and back home without accidents and without having to stop several times for bathroom and/or incontinence pad changing.

Claimant and her representative offered no substantial medical evidence to support their contention that Claimant should have received more points on his PAS than she was originally awarded.

- 4) Claimant testified that her level of care should remain at "D" because she needed more assistance than a "C" level of care. She stated that her condition is deteriorating and she needs more help now than she did when the PAS was completed. Her spouse testified that Claimant's physical condition is deteriorating. He testified that the only way for anyone to appreciate just how badly her condition has deteriorated is for him or her to come to their home and spend some time with Claimant. Neither Claimant nor her spouse offered any substantial medical evidence to support their contention that she should have received more points on the PAS than she was originally awarded.

## **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 21 points as the result of a PAS completed by WVMI in January 2010.
- 2) No additional PAS points for dyspnea will be awarded because Claimant's physician did not include this diagnosis in his referral to the ADW program.
- 3) No additional PAS points for bladder continence will be awarded because Department's witness correctly assessed Claimant at Level 2, occasional incontinence, based on the nurse reviewer's interview with Claimant during the PAS.

- 4) Since no additional points will be added to Claimant's PAS evaluation score, it will remain at 21 points. She meets the medical criteria required to receive a Level C 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 "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 21<sup>st</sup> day of September 2010.**

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**Stephen M. Baisden  
State Hearing Officer**