



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

October 13, 2010

-----For:-----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your brother -----'s hearing held June 30, 2010. His hearing request was based on the Department of Health and Human Resources' decision to reduce his 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 § 501.3).

The information submitted at your brother's hearing revealed that he meets the medical criteria required for Level "C" care.

It is the decision of the State Hearings Officer to **Reverse** the proposal of the Department to reduce -----'s 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

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

Claimant

v.

Action Number: 10-BOR-1206

**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 October 13, 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 June 30, 2010 on a timely appeal filed April 2, 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's representative and sister

-----, [REDACTED] Claimant's witness

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
Kathy Levock, 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 "C" to a Level "B."

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 March 9, 2010
- D-3 Notice of Decision dated March 22, 2010
- D-4 Additional information from [REDACTED] WV, dated April 8, 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, and conducted it on March 9, 2010. (Exhibit D-2.) Claimant was awarded a total of 17 points on the PAS and was approved for Level B of care. WVMI reported its decision to Claimant in a Notice of Decision dated March 22, 2010. (Exhibit D-3.)
- 3) Claimant's representative testified that Claimant should have received one more points on his PAS. She stated Claimant should have received an additional point on item #23, Medical Conditions/Symptoms, for item h, pain. She testified that additional information was faxed to the West Virginia Medical Institute on April 8, 2010. (Exhibit D-4.) This information was a diagnosis written by Claimant's physician, [REDACTED] D.O., giving Claimant a diagnosis of pain and total disorientation.
- 4) Department's representative testified that she would argue the diagnosis of total disorientation. However, she testified that she would not object to the addition of the diagnosis of pain to Claimant's assessment. She added that the additional information arrived at WVMI sixteen days after the notice of decision was sent to Claimant, while the letter of decision states additional documentation should be submitted within 13 days. However, she added, the additional information arrived just a few days late, and she had no reason to doubt the authenticity of the documentation or the accuracy of the diagnosis. Department's witness, the WVMI nurse who performed the PAS, testified that if she had received the diagnosis within the 13-day period, she would have accepted it and recalculated the score.

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 March 2010. 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) No additional PAS points for total disorientation will be awarded.
- 3) One additional PAS point for pain will be awarded. Claimant's physician submitted an additional diagnosis of pain. Despite the fact that this documentation arrived after the 13-day time limit for consideration of new information, Department's representative did not object to its inclusion in the PAS.
- 4) Since one additional point will be added to Claimant's PAS evaluation score, it will increase to 18 points. He meets the medical criteria required to receive a Level C of care.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** 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 13th day of October 2010.

**Stephen M. Baisden
State Hearing Officer**