



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

May 12, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 14, 2010. Your hearing request was based on the Department of Health and Human Resources' decision to approve you for homemaker hours at a Level B care instead of 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 WVM (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 C care.

It is the decision of the State Hearings Officer to **Uphold** the action of the Department to award homemaker hours as a 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]

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

-----,

Claimant,

v.

Action Number: 09-BOR-2069

**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 May 12, 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 January 14, 2010 on a timely appeal, filed October 14, 2009.

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 Representative and Caregiver
-----, Claimant's Witness and Daughter

Cathie Zustan, 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.

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 Claimant's homemaker hours were correctly rated at a "B" level of care.

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 September 28, 2009

Claimant's Exhibit:

- C-1 Letter from Claimant's physician, [REDACTED] D.O., dated January 13, 2010.

VII. FINDINGS OF FACT:

- 1) Department's representative, Cathie Zustan of the WV Bureau of Senior Services, 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, Kathy Gue, RN, of the West Virginia Medical Institute (WVMI) testified that she completed a Pre-Admission Screening (PAS) for the Aged and Disabled Waiver Services (ADW) program on September 28, 2009. (Exhibit D-2.) The PAS item #23 lists twelve medical conditions and/or symptoms, each of which is worth one point on the evaluation. Claimant was given four evaluation points for item #23, for significant arthritis, pain, mental disorder and other. Other was identified as HTN, or hypertension. Claimant received one point for item #25, ability to vacate a building. Item #26 lists 13 areas for the evaluator to assess functional levels in various life skills, and assigns points based on the functional level of each skill. Claimant received one point each in the areas of eating, bathing, dressing, grooming, bowel continence, transferring, and walking, and two points for bladder incontinence, for a total of nine points. Claimant was awarded a total of 14 points on the PAS and was approved for Level B care. WVMI communicated its decision to Claimant in a Notice of Decision dated October 5, 2009. (Exhibit D-3.)

- 2) ----, Claimant's principal care-giver and representative, testified that Claimant should have received two more points on her PAS, for wheeling and vision. She testified that when Claimant goes out of the home, she has to use a wheelchair. She does not use a wheelchair in the home. Department's witness responded that in order to receive a point for wheeling on the PAS, a wheelchair must be used in the home and walking must be rated at Level 3 or higher. Claimant's representative testified that Claimant should receive a point for vision because Claimant was due to have surgery on her eyes. Department's witness stated that Claimant's vision on the PAS was assessed as "2 – Impaired/Correctable" with no point awarded. Department's witness stated that if Claimant was going to have surgery on her eyes then they were correctable and no point was warranted.
- 3) Claimant's representative submitted into evidence a letter from Claimant's physician, [REDACTED] D. O., dated January 13, 2010. (Exhibit C-1.) This letter requested that Claimant's level of care be increased, but presented no substantial medical information to support the awarding of additional points on her PAS assessment.
- 4) Claimant's representative testified that four hours per day (Level of Care B, 93 hours per month) is not enough time to take care of Claimant properly and to transport her to and from her various medical appointments. Claimant's witness, her daughter ----, testified that Claimant lives so far away from the location of most of her doctor's appointments that four hours per day is barely enough time to take her to and from an appointment, without any time remaining to see to her other needs. Neither Claimant's representative nor her witness presented any medical evidence that would substantiate the awarding of more points on Claimant's PAS.

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 14 points as the result of a PAS completed by WVMI in September 2009.
- 2) No PAS points for wheeling will be awarded because Claimant's representative testified that Claimant did not use a wheelchair inside her home.
- 3) No PAS points for vision will be awarded because no substantial medical evidence was submitted that indicated Claimant's vision was not correctable by eyeglasses or surgery.
- 4) Since no additional points will be added to Claimant's PAS evaluation score, it will remain at 14 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 award Claimant Level B care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 12th day of May 2010.

**Stephen M. Baisden
State Hearing Officer**