



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 14, 2009

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 18, 2009. 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 instead of Level C.

Sincerely,

Stephen M. Baisden  
State Hearings Officer  
Member, State Board of Review

cc: Board of Review  
Bureau of Senior Services  
Integrated Resources Incorporated  
West Virginia Medical Institute

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

-----,

**Claimant,**

v.

**Action Number: 09-BOR-1496**

**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 14, 2009 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 18, 2009 on a timely appeal, filed June 8, 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

-----, RN, Witness for Claimant

Kay Ikerd, RN, Bureau of Senior Services (by phone)

Michelle Wiley, RN, West Virginia Medical Institute (WVMI) (by phone)

Presiding at the Hearing was Stephen M. Baisden, State Hearing Officer and a member of the Board of Review.

**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 May 21, 2009
- D-3 Notification Letter dated May 28, 2009
- D-4 Physicians' reports submitted by [REDACTED], a home health management company that provides services to Claimant
- D-5 Request for hearing signed by ----, Claimant's guardian and representative
- D-6 Medicaid Aged and Disabled Waiver Program Medical Necessity Evaluation Request, dated March 4, 2009.

**VII. FINDINGS OF FACT:**

- 1) Department's representative, Kay Ikerd of the WV Bureau of Senior Services, asked that judicial notice be given of the applicable policy for this hearing. Judicial notice was granted and the policy was entered into the record. (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) Michelle Wiley of West Virginia Medical Institute (WVMI) testified that she completed a Pre-Admission Screening (PAS) for the Aged and Disabled Waiver Services (ADW) program on May 21, 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 five evaluation points for item #23, for paralysis, aphasia, diabetes, mental disorder and other. Other was identified as CVA, or stroke. Claimant received one points 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, bladder continence, bowel continence, transference, walking and communication, for a total of nine points. Claimant was given one point for item #28, ability to administer his/her own medication. Claimant was awarded a total of 16 points on the PAS and was approved for Level B care. WVMI communicated its decision to Claimant in a Notice of Decision dated May 28, 2009. (Exhibit D-3.)
  
- 3) -----, RN, Nurse Supervisor from Claimant's home health provider, Integrated Resources Inc., testified that he submitted to WVMI information from two of Claimant's health care providers on August 10, 2009, Vaught Neurological Services and Gastroenterology of Southern WV. Department's representative indicated she received this information and included it as part of the hearing

packet. (Exhibit D-4.) -----indicated that he submitted this information as evidence that Claimant should have received three more points on her PAS, for (a.) dyspnea (shortness of breath), (b.) dysphagia (difficulty swallowing) and (c.) pain. He also asserted Claimant should have received a point on item #34 of the PAS, for (d.) Alzheimer's, multi-farct, senile dementia or related conditions. Claimant's primary care-giver and representative ----- testified that she felt Claimant should have received points for (e.) contractures and (f.) speech. Due their disagreement with the PAS in these areas, Claimant's representative and ----- requested a fair hearing on the PAS findings. (Exhibit D-5.)

- 4) Department's representative and WVMi representative both indicated that WVMi did not have the information in this packet at the time the PAS was complete. However, Department's representative stated that since the Claimant's neurological examination was done before the PAS, she would be willing to consider it in order to evaluate Claimant's level of care evaluation.
- (a.) Since the neurological findings did contain indications of dyspnea, the Department does not protest the finding of dyspnea in Claimant's case.
- (b.) Department's representative did not agree with the finding of dysphagia. According to the information Claimant's representatives sent to the Bureau of Senior Services, Exhibit D-4, on page of 7 of 14, the neurologist's report found no difficulty in swallowing from Claimant. Exhibit D-4 also includes a report from Claimant's gastroenterologist which indicates dysphagia, but this report was not printed until 7/27/09, after the PAS was completed. Therefore, the PAS evaluator could not have had access to this report.
- (c.) Department's representative also disagreed with the awarding of a PAS point for pain. Claimant's representative indicated that a point for pain should be assessed because two of Claimant's listed medications, Baclofin and Neurontin, have analgesic properties. Department's representative stated that while these medications may have some effect on a patient's pain, the primary purpose of these medications are to prevent seizures in the case of Neurontin and to prevent muscle cramping in the case of Baclofin.
- (d.) Department's representative did not agree with awarding a PAS point for Alzheimer's/multifarct/senile dementia/related conditions. She stated there were no previous diagnoses of mental deterioration. Claimant's witness countered that one of the medical reports, from Claimant's gastroenterologist, indicates altered mental status; however, the WVMi evaluator did not have access to this report. Also, Department's representative indicated that Claimant's primary care physician had submitted a Medical Necessity Evaluation Request as part of Claimant's application for the Aged and Disabled Waiver Program. (Exhibit D-6.) This request has a box which the physician must check if the applicant has any of these mental status deterioration issues; Claimant's primary care physician did not indicate these issues by checking the appropriate box.
- (e.) Department's representative disagreed with awarding a PAS point to Claimant for contracture. She stated that a contracture is a joint that is absolutely frozen, that cannot be moved voluntarily or by someone else. She further

indicated, and the WVMI representative agreed, that no previous diagnosis of contracture existed.

(f.) Department's representative noted Claimant's representative's concern in the area of speech, but she and WVMI representative noted that Claimant was given one point for communication on her 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 16 points as the result of a PAS completed by WVMI in May 2009.
- 2) The Department does not protest the awarding of a PAS evaluation point for a finding of dyspnea in Claimant's case. Therefore, Claimant will be awarded one (1) point for this medical condition.
- 3) No PAS points for dysphagia will be awarded because it is not supported by evidence from medical reports that should have been available at the time the PAS was completed.
- 4) No PAS points for pain will be awarded because the analgesic properties of two of Claimant's medications cannot be isolated as the primary reason for prescribing them.
- 5) No PAS points for Alzheimer's/multifarct/senile dementia will be awarded because no previous indications for this condition existed in medical information available to WVMI at the time the PAS was completed.
- 6) No PAS points for contracture will be awarded because no previous indications for this condition existed in medical information available to WVMI at the time the PAS was completed.
- 7) No additional PAS points for communication/speech will be awarded because the WVMI evaluator gave Claimant one point in the PAS evaluation.
- 8) With the addition of one (1) point for dyspnea, Claimant's PAS evaluation score will increase from 16 to 17. 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. Claimant will be given 1 additional point for dyspnea, for a total of 17 points.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 13<sup>th</sup> day of October 2009.**

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**Stephen M. Baisden  
State Hearing Officer**